2–15–05 Tuesday
Vol. 70 No. 30 Feb. 15, 2005

Pages 7633–7838

Federal Register

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket Nos. AO–341–A6; FV02–929–1A]

Cranberries Grown in the States of Massachusetts, et al.; Order Amending Marketing Agreement and Order No. 929

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order for cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The amendments are based on those proposed by the Cranberry Marketing Committee (Committee), which is responsible for local administration of the order and other interested parties representing cranberry growers and handlers. The amendments will: Revise the volume control provisions; add authority for paid advertising; authorize the Committee to reestablish districts within the production area and reapportion grower membership among the various districts; clarify the definition of handle; and incorporate administrative changes. The amendments are intended to improve the operation and functioning of the cranberry marketing order program.

DATES: *Effective Date:* February 16, 2005.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on April 23, 2002, and published in the May 1, 2002, issue of the **Federal Register** (67 FR 21854); Secretary's Decision on partial amendments issued on December 4, 2003, and published in the December 12 issue of the **Federal Register** (68 FR 69343); final order amending order on partial amendments issued on April 5, 2004, and published in the April 9 issue of the **Federal Register** (69 FR 18803); recommended decision on remainder of amendments issued on April 21, 2004, and published in the April 28 issue of the **Federal Register** (69 FR 23330); and Secretary's decision on remainder amendments issued on November 30, 2004, and published in the December 1 issue of the **Federal Register** (69 FR 69995).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated based on the record of a public hearing held in Plymouth, Massachusetts on May 20 and 21, 2002; in Bangor, Maine on May 23, 2002; in Wisconsin Rapids, Wisconsin on June 3 and 4, 2002; and in Portland, Oregon on June 6, 2002. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 929, regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to collectively as the ''order.'' The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The notice of hearing contained numerous proposals submitted by the Committee, other interested parties and one proposed by the Agricultural Marketing Service (AMS). This action adopts the remaining potion of proposed amendments listed in the Notice of Hearing that were not expedited in a previous proceeding.

The amendments included in this decision will: Authorize the Committee to reestablish districts within the production area and reapportion grower membership among the various districts; simplify criteria considered and set forth more appropriate dates in establishing the Committee's marketing policy; revise the formula for calculating sales histories under the producer allotment program; allow compensation of sales history for catastrophic events that impact a grower's crop; remove specified dates relating to when information is required to be filed by growers/handlers in order to issue annual allotments; clarify how the Committee allocates unused allotment to handlers; allow growers who decide not to grow a crop flexibility in deciding what to do with their allotment; allow growers to transfer allotment during a year of volume regulation; authorize the implementation of the producer allotment and withholding programs in the same year; require specific authority to exempt fresh, organic or other forms of cranberries from order provisions; allow for greater flexibility in establishing other outlets for excess cranberries; update and streamline the withholding volume control provisions; modify the buy-back provisions under the withholding volume control provisions; add authority for paid advertising under the research and development provision of the order; modify the definition of handle to clarify that transporting fresh cranberries to foreign countries is considered handling and include the temporary cold storage or freezing of withheld cranberries as an exemption from handling; relocate some reporting provisions to a more suitable provision and streamline the language relating to verification of reports and records; and delete an obsolete provision from the order relating to preliminary regulation.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of

the proposed amendments are adopted, so that all of the order's provisions conform to the effectuated amendments.

Upon the basis of evidence introduced at the hearing, a Secretary's decision was issued on December 1, 2004, directing that a referendum be conducted during the period December 13 to December 27, 2004, among growers and processors of cranberries to determine whether they favored the proposed amendments to the order. In the referendum, all amendments were favored by more than two-thirds of the growers voting in the referendum by number or by volume. Processors representing more than 50 percent of the crop also approved the amendments.

The amended marketing agreement was mailed to all cranberry handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of cranberries handled by all handlers during the representative period of September 1, 2003, through August 31, 2004.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that these amendments will not result in additional regulatory requirements being imposed on some cranberry growers and handlers.

There are about 20 handlers currently regulated under Marketing Order No. 929. In addition, the record indicates that there are about 1,250 producers of cranberries in the current production area.

Based on recent years' price and sales levels, AMS finds that nearly all of the cranberry producers and some of the handlers are considered small under the SBA definition. In 2001, a total of 34,300 acres were harvested with an average U.S. yield per acre of 156.2 barrels. Grower prices in 2001 averaged $22.90 per barrel. Average total annual grower receipts for 2001 are estimated at $153,375 per grower. However, there are some growers whose estimated sales would exceed the $750,000 threshold. Thus, these amendments will apply almost exclusively to small entities.

Five handlers handle over 97 percent of the cranberry crop. Using Committee data on volumes handled, AMS has determined that none of these handlers qualify as small businesses under SBA's definition. The remainder of the crop is marketed by about a dozen grower-handlers who handle their own crops. Dividing the remaining 3 percent of the crop by these grower-handlers, all would be considered small businesses.

This action amends the order to: Authorize the Committee to reestablish districts within the production area and reapportion grower membership among the various districts; simplify criteria considered and set forth more appropriate dates in establishing the Committee's marketing policy; revise the formula for calculating sales histories under the producer allotment program; allow compensation of sales history for catastrophic events that impact a grower's crop; remove specified dates relating to when information is required to be filed by growers/handlers in order to issue annual allotments; clarify how the Committee allocates unused allotment to handlers; allow growers who decide not to grow a crop flexibility in deciding what to do with their allotment; allow growers to transfer allotment during a year of volume regulation; authorize the implementation of the producer allotment and withholding programs in the same year; require specific dates for recommending volume regulation; add specific authority to exempt fresh, organic or other forms of cranberries from order provisions; allow for greater flexibility in establishing other outlets for excess cranberries; update and streamline the withholding volume control provisions; modify the buy-back provisions under the withholding volume control provisions; add authority for paid advertising under the research and development provision of the order; modify the definition of handle to clarify that transporting fresh cranberries to foreign countries is considered handling and include the temporary cold storage or freezing of withheld cranberries as an exemption from handling; relocate some reporting provisions to a more suitable provision and streamline the language relating to verification of reports and records; and delete an obsolete provision from the order relating to preliminary regulation.

Reestablishment of Districts and Reapportionment of Grower Membership Among the Districts

The amendment to authorize the Committee to reestablish and/or reapportion districts will give the Committee greater flexibility in responding to changes in grower demographics and district significance in the future. This authority will allow the Committee to recommend changes through informal rulemaking rather than through an order amendment. The amendment includes specific criteria to be considered prior to making any recommendations.

This authority does not change the districts. It only authorizes the Committee to recommend changes more efficiently. No additional administrative costs are anticipated with this amendment.

Development of Marketing Policy

Section 929.46 of the order requires the Committee to develop a marketing policy each year as soon as practicable after August 1. In its marketing policy, the Committee projects expected supply and market conditions for the upcoming season. The marketing policy should be adopted before any recommendation for regulation, as it serves to inform USDA and the industry, in advance of the marketing of the crop, of the Committee's plans for regulation and the bases therefore. Handlers and growers can then plan their operations in accordance with the marketing policy.

The Committee is currently required to consider nine criteria in developing its marketing policy. The criteria include such items as expected production, expected demand conditions, and inventory levels. The amendment will remove the criteria not considered to be relevant in making a decision on the need for volume regulation.

The marketing order section of the order also states that the Committee must estimate the marketable quantity necessary to establish a producer allotment program by May 1, and must submit its marketing policy to USDA after August 1. These dates are inconsistent with the dates by which the Committee must recommend a volume

regulation (if one or both are deemed necessary) for the upcoming crop. This amendment will remove both dates.

These changes are non-substantive in nature. They remove unnecessary criteria and obsolete dates from the order. As such, they will have no economic impact on growers or handlers.

Sales History Calculations Under the Producer Allotment Program

The amendment to modify the method for calculating sales histories will provide growers with additional sales histories to compensate them for expected increases in yields on newer acres during a year of volume regulation, which would result in sales histories more reflective of actual sales. This amendment will also allow more flexibility in recommending changes to the formula and add the authority to calculate fresh and processed cranberries separately.

The amendment to the sales history calculations will benefit a majority of growers, especially growers who planted some or all of their acreage within the previous 5 years. It will also help ensure that growers with mature acres who also have newer acreage and growers with only newer acres are treated equitably.

During the 2000 volume regulation, many growers, particularly those with acreage 4 years old or less, indicated that the method of sales history calculation placed them at a disadvantage because they realized more production on their acreage than their sales history indicated. With the volume of new acres within the industry, this would affect many growers.

The Committee determined that something needed to be done to address the concerns associated in the 2000 crop year with growers with newer acreage. The Committee discussed a number of approaches for estimating sales history on new acres. One suggestion was to allow growers with newer acreage to add a percentage of the State average yield to their sales history each year up to the fourth year. The example presented was that acreage being harvested for the second time during a year of volume regulation would receive a sales history that was 25 percent of the State average yield, a third year harvest would receive 50 percent of State average yield, and a fourth year harvest would receive 75 percent of State average yield. Although this method would address some of the problems experienced in 2000, it was determined that the method established by this action would be simpler and more practical for growers to obtain the most realistic sales history.

This action addresses grower concerns regarding determination of their sales histories. The method provides additional sales history for growers with newer acres to account for increased yields for each growing year up to the fifth year by factoring in appropriate adjustments to reflect rapidly increasing production during initial harvests. The adjustments are in the form of additional sales histories based on the year of planting.

An appeals process will be established in crop years when volume regulation is used for growers to request a redetermination of their sales histories. For the 2000–2001 volume regulation, over 250 appeals were received by the appeals subcommittee (the first level of review for appeals). In 2001–2002, a total of 49 appeals were filed. The decrease in appeals filed was a direct result of the formula for calculating sales histories that was implemented in 2001. This amendment represents a generic version of the formula that was used in 2001.

This amendment will not impose any immediate regulations on large or small growers and handlers. It will only modify the formula for calculating sales histories in the event volume regulations are implemented in the future. This amendment will benefit small businesses by allowing them more flexibility in receiving a more equitable sales history if volume regulations are recommended and implemented in future years. Growers and handlers will know specifically how sales histories are calculated so they can be informed and business decisions can be made ahead of the future season.

The amendment also includes that sales histories, starting with the crop year following adoption of this amendment, will be calculated separately for fresh and processed cranberries. Fresh and organic fruit were exempt from the 2000 and 2001 volume regulations because it was determined that they did not contribute to the surplus. In both years, fresh fruit sales were deducted from sales histories and each grower's sales history represented processed sales only. To have sales histories more reflective of sales, the Committee proposed calculating separate sales histories for fresh and processed cranberries. Also, in future years, fresh cranberry sales could contribute to the surplus. This amendment makes sales history calculations more equitable.

These changes will have a positive effect on all growers and handlers because they will result in a more equitable allocation of the marketable quantity among growers. The amendment will be favorable to both large and small entities.

Catastrophic Events That Impact Growers' Sales Histories

The amendment will provide more flexibility in the provision under the sales history calculations that compensates growers with additional sales histories for losses on acreage due to forces beyond the grower's control.

The current provisions require that if a grower has no commercial sales from acreage for 3 consecutive crop years due to forces beyond the grower's control, the Committee shall compute a level of commercial sales for the fourth year for that acreage using an estimated production.

The record revealed that this provision was too stringent as evidenced by only one grower meeting these criteria in two years of volume regulation.

The amendment will authorize the Committee to recommend rules and regulations to allow for adjustments of a grower's sales history to compensate for catastrophic events that impact a grower's crop. The Committee will recommend procedures and guidelines to be followed in each year a volume regulation is implemented. The amendment will have a positive impact on both large and small growers as the Committee would be in a position to compensate more growers who experienced losses due to catastrophic events than the current order provides.

Remove Specified Dates Relating To Issuing Annual Allotments

The order currently provides that when a producer allotment regulation is implemented, USDA establishes an allotment percentage equal to the marketable quantity divided by the total of all growers' sales histories. The allotment percentage is then applied to each grower's sales history to determine that individual's annual allotment. All growers must file an AL–1 form with the Committee on or before April 15 of each year in order to receive their annual allotments. The Committee is required to notify each handler of the annual allotment that can be handled for each grower whose crop will be delivered to such handler on or before June 1.

Experience during the 2000 and 2001 crop years has proven that maintaining a specified date by which growers are to file a form to qualify for their allotment and for the Committee to notify handlers of their growers' annual allotments has been difficult. This amendment will delete the specified

dates and allow the Committee to determine, with the approval of USDA, more appropriate dates by which growers are to file forms and the Committee is to notify handlers of their growers' annual allotments. The Committee would like to have established dates that the industry can realistically meet each season when a volume regulation is implemented.

Because volume regulation was not recommended until the end of March during 2000 and 2001, growers had difficulty in submitting the required reports in a timely manner. Additionally, the rulemaking process to establish the allotment percentage was not completed by June 1. Therefore, the Committee was unable to notify handlers of their growers' allotment by the specified deadline. With this amendment, dates could be established in line with the timing of the recommendation and establishment of volume regulation. Allowing the Committee to set dates that can realistically be met by the industry would better serve the purposes of the marketing order. Thus, this modification should benefit the entire industry, both large and small entities.

This amendment will also clarify the explanation of how an allotment percentage is calculated. Currently, section 929.49(b) states that such allotment percentage shall equal the marketable quantity divided by the total of all growers' sales histories. It does not specify that ''all growers' sales histories'' include the sales histories calculated for new growers. This rule adds a clarification to ensure that total sales histories (including those of new growers) are used in this calculation. To the extent this clarification makes the terms of the order easier to understand, it should benefit cranberry growers and handlers.

This rule also revises the information to be submitted by growers to qualify for an annual allotment. Currently, all growers must qualify for allotment by filing with the Committee a form including the following information: (1) The location of their cranberry producing acreage from which their annual allotment will be produced; (2) the amount of acreage which will be harvested; (3) changes in location, if any, of annual allotment; and (4) such other information, including a copy of any lease agreement, as is necessary for the Committee to administer the order. Such information is gathered by the Committee on a form specified as the AL–1 form.

The amendment will modify these criteria by not including information that is not pertinent. Currently, growers are assigned a grower number and the amount of acreage on which cranberries are being produced is maintained. The location of the cranberry producing acreage is not maintained. Therefore, there is no need to specify this information on the form. It is also unnecessary to include changes in location, if any, of growers' annual allotment including the lease agreement. Annual allotment is linked to a grower's cranberry producing acreage and, since the acreage cannot be moved from one location to another, information on changes in location is not relevant. Therefore, the information to be submitted by growers is revised by removing the information that the Committee does not need to operate a producer allotment program. Other information that is currently requested (including identifying the handler(s) to whom the grower will assign his or her allotment) will remain unchanged.

The AL–1 form was modified (and approved by OMB) prior to the 2001 volume regulation. At that time, the Committee did not include this information on the form. Therefore, there is no reporting burden change as a result of this amendment. This change removes the unnecessary information from the order language.

Clarify How the Committee Allocates Unused Allotment to Handlers

The amendment will change the method by which the Committee allocates unused allotment to handlers having excess cranberries to proportional distribution of each handler's total allotment.

Currently under the producer allotment volume regulation features of the order, section 929.49(h) provides that handlers who receive cranberries more than the sum of their growers' annual allotments have ''excess cranberries'' and shall notify the Committee. Handlers who have remaining unused allotment are ''deficient'' and shall notify the Committee. The Committee shall equitably distribute unused allotment to all handlers having excess cranberries.

The proponents testified that there has been a debate in the industry on the interpretation of what equitable distribution means and how it should be accomplished. To add specificity, the amendment will replace the words ''equitably distribute'' with ''proportional to each handler's total allotment''.

The proponents testified that the distribution of unused allotment will only be given to those handlers who have excess fruit and are in need of allotment to cover that fruit. Allotment is only distributed proportionately to handlers when there are more requests for unused allotment than available unused allotment. In this situation, handlers will then receive the allotment in proportion to the volume of cranberries they handle.

This amendment will have a positive impact on large and small handlers since handlers may be able to acquire the additional allotment they need for their excess berries than they would have under the current provisions.

Growers' Assignment of Allotment if No Crop Is Produced

The amendment to authorize growers who choose not to produce a crop in years of volume regulation to not assign their allotment to their handler will provide growers with flexibility to decide what happens with their unused allotment. Currently, the order requires the allotment to go to the handlers.

Prior to implementing this provision, the Committee would consider what would happen to the unused allotment and recommend, with USDA approval, implementing regulations. This amendment will benefit growers who choose not to grow a crop by providing them with input into the allocation of that allotment. This amendment should be favorable to both large and small growers.

Transfers of Allotment During Years of Volume Regulation

The amendment will allow growers to transfer allotment during a year of volume regulation and allow the sales history to remain with the lessor when there is a total or partial lease of cranberry acreage to another grower. Currently, growers are not allowed to transfer allotment to other growers. The only option available to growers to accomplish a transfer of allotment is to complete a lease agreement between the two growers. This involves filing paperwork, including signed leases and only transferring the sales history, not the allotment. Many of the lease agreements were initiated during the two years of volume regulation and created a burden on Committee staff. It also made recalculations of growers sales histories difficult.

This amendment will simplify the process for growers by authorizing growers to transfer all or part of his or her allotment to another grower. Safeguards are in place to ensure that the transferred allotment remains with the same handler unless consent is provided by both handlers. In addition, the Committee may establish dates by which transfers may take place.

This amendment will be beneficial to both large and small growers as it provides flexibility in transferring allotment.

Implementing Both Forms of Volume Regulation in the Same Year

The amendment to require authorizing both forms of volume regulation in the same year was proposed in accordance with an amendment to the Act in November 2001. The amendment specified that USDA is authorized to implement a producer allotment program and a handler withholding program in the same crop year through informal rulemaking based on a recommendation and supporting economic analysis submitted by the Committee. If such recommendation is made by the Committee, it must be made no later than March 1 of each year. The amendment would provide additional flexibility to the Committee when considering its marketing policy each year.

This amendment should be favorable to both large and small entities.

Dates for Recommending Volume Regulation

The amendment to require the Committee to recommend a producer allotment program by March 1 each year will allow growers to alter their cultural practices in an efficient manner in the event that a producer allotment is implemented. Growers have indicated that they need to know as soon as possible whether the Committee is going to recommend a regulation since a producer allotment program requires growers to only deliver a portion of their crop. The Committee's decision influences whether growers can cut back on purchases of chemicals, fertilizer or possibly take acreage out of production. This can result in growers' savings. The later the decision is made, the chances are growers will have already invested these costs on their acreage.

The amendment to require the Committee to recommend a handler withholding program by August 31 each year will provide the Committee staff with ample time to prepare reports based on handler inventory reports and crop projection data received from the National Agricultural Statistics Service (NASS). Because the withholding program does not impact grower deliveries, this date is more appropriate for making an informed decision on whether to recommend this type of program.

Another amendment will authorize both forms of volume regulation to be implemented each year in accordance with an amendment to the Act authorizing such proposal. The amendment states that if both forms of volume regulation are recommended, it should be done by March 1. Therefore, this amendment will require that if both forms of regulation are recommended in the same year that it be recommended by March 1. The same reasoning for recommending a producer allotment alone would apply to this proposed requirement. Growers need to know as soon as possible if production costs can be mitigated if a producer allotment is recommended. All growers, both large and small, should benefit from this change.

Exemptions From Order Provisions

The amendment providing that specific authority be added to exempt fresh, organic or other forms of cranberries from order provisions will clarify the current language and provide guidelines for the specific forms or types of cranberries that could be exempted.

Fresh and organic cranberries were exempted from the 2000 and 2001 volume regulations under the minimum quantity exemption authority of the order. This amendment will merely clarify that authority in the order to ensure that fresh and organic and other forms of cranberries could be exempted if warranted in the future. This amendment should be beneficial to large and small entities.

Expand Outlets for Excess Cranberries

The amendment to the outlets for excess cranberries provisions will broaden the scope of noncommercial and noncompetitive outlets for excess cranberries. This amendment will provide the Committee, with USDA's approval, the ability to recognize and authorize the used of additional or new noncommercial and/or noncompetitive outlets for excess cranberries through informal rulemaking.

Because competitive markets can change from season to season and new and different research ideas can be devised, the Committee will develop guidelines each year a volume regulation is recommended that would be used in determining appropriate outlets for excess cranberries. This will benefit growers and handlers by providing flexibility in determining outlets. This amendment will be particularly useful in determining which foreign markets can be used as outlets for excess cranberries. Foreign markets are one area where growth is occurring and demand is increasing. Exports of cranberries have increased from 184,000 barrels in 1988 to 824,000 barrels in 2000. Both large and small entities should benefit from this amendment.

General Withholding Provisions

Section 929.54 of the order sets forth the general parameters pertaining to withholding regulations. Under this form of regulation, free and restricted percentages are established, based on market needs and anticipated supplies. The free percentage is applied to handlers' acquisitions of cranberries in a given season. A handler may market free percentage cranberries in any chosen manner, while restricted berries must be withheld from handling.

The withholding provisions of the order were used briefly over three decades ago. Although the cranberry industry has not used the authority for withholding regulations in quite some time, the record evidence supports maintaining this tool for possible future use. However, substantive changes in industry practices have rendered current withholding provisions in need of revision. Thus, this amendment updates and streamlines those provisions.

The record shows that at the time the withholding provisions were designed, the cranberry industry was much smaller, producing and handling much lower volumes of fruit than it does now. In 1960, production was about 1.3 million barrels; by 1999, a record 6.3 million barrels were grown. A much higher percentage of the crop was marketed fresh—about 40 percent in the early 1960's versus less than 10 percent in recent years.

Changes in harvesting and handling procedures have been made so the industry is better able to process higher volumes of cranberries. Forty years ago, virtually all cranberries were harvested dry, and water harvesting was in an experimental stage of development. Water harvesting is currently widespread in certain growing regions; cranberries harvested under this method must be handled immediately as they are subject to rapid deterioration.

In the early 1960's, handlers acquired some cranberries that had been ''screened'' to remove extraneous material that was picked up with the berries as they were being harvested, and ''unscreened'' berries from which the extraneous material (including culls) had not been removed. The handler cleaned some of the unscreened berries immediately upon receipt, while others were placed in storage and screened just prior to processing.

The order currently provides that when a withholding regulation is

implemented, the restricted percentage will be applied to the volume of ''screened'' berries acquired by handlers. Since the term ''screening'' is obsolete, all references to that term are being deleted.

The order also currently provides that withheld cranberries must meet such quality standards as recommended by the Committee and established by USDA. The Federal or Federal-State Inspection Service must inspect such cranberries and certify that they meet the prescribed quality standards. The intent of these provisions is, again, to ensure that the withholding regulations reduce the volume of cranberries in the marketplace by not allowing culls to be used to meeting withholding obligations. The inspection and certification process is also meant to assist the Committee in monitoring the proper disposition of restricted cranberries, thereby ensuring handler compliance with any established withholding requirements.

The need for inspection and certification of withheld cranberries is not as great today as in the past. Additionally, it could be costly, particularly since most withheld berries would subsequently be dumped, generating no revenue for growers or handlers. The inspection process could also inordinately slow down handling operations, and there could be differential impacts of such requirements because some handling facilities operate in ways that lend themselves to more efficient methods of pulling representative samples (for inspection purposes) than others.

Removing the requirements for mandatory inspection and certification requirements will allow the industry to develop alternative safeguards to achieve its objectives at lower cost. While the inspection process may be deemed the best method by the Committee, this amendment provides flexibility by allowing the Committee to consider other, less costly alternatives.

Eliminating the mandatory inspection under the withholding program and deleting obsolete terminology will make the program more flexible for the industry and allow the Committee to operate more efficiently. As such, this amendment should benefit cranberry growers and handlers by providing an additional tool they could use in times of cumbersome oversupply.

Buy-Back Provisions Under the Handler Withholding Program

Section 929.56 of the order, entitled ''Special provisions relating to withheld (restricted) cranberries,'' sets forth procedures under which handlers may have their restricted cranberries released to them. These provisions are commonly referred to in the industry as the buy-back provisions.

Under the current buy-back provisions, a handler can request the Committee to release all or a portion of his or her restricted cranberries for use as free cranberries. The handler request has to be accompanied by a deposit equal to the fair market value of those cranberries. The Committee then attempts to purchase as nearly an equal amount of free cranberries from other handlers. Cranberries so purchased by the Committee are transferred to the restricted percentage and disposed of by the Committee in outlets that are noncompetitive to outlets for free cranberries. The provision that each handler deposit a fair market price with the Committee for each barrel of cranberries released and that the Committee use such funds to purchase an equal amount or as nearly an equal amount as possible of free cranberries is designed to ensure that the percentage of berries withheld from handling remains at the quantity established by the withholding regulation for the crop year.

The Committee has the authority to establish a fair market price for the release of restricted cranberries under the buy-back program. The money deposited with the Committee by handlers requesting release of their restricted cranberries is the only money the Committee has available for acquiring free cranberries. Thus, the amount deposited must be equal to the then current market price or the Committee will have insufficient funds to purchase a like quantity of free cranberries.

The Committee is required to release the restricted cranberries within 72 hours of receipt of a proper request (including the deposit of a fair market value). This release was made automatic so that handlers will be able to plan their operations, and very little delay would be encountered.

If the Committee is unable to purchase free berries to replace restricted cranberries that are released under these provisions, the funds deposited with the Committee are required to be returned to all handlers in proportion to the volume withheld by each handler.

This amendment authorizes direct buy-back between handlers. With this option, a handler will not have to go through the Committee to have his or her restricted berries released. Instead, that handler could arrange for the purchase of another handler's free cranberries directly. All terms, including the price paid, would be between the two parties involved and would not be prescribed by the Committee. This change will add flexibility to the order and could offer a more efficient method of buying back cranberries. Also, no Committee administrative costs would be incurred. Handlers will have the option of using this method, or they could buy back their berries through the Committee, as is currently provided.

There are four criteria the Committee needs to consider in establishing a fair market price under the buy-back program for purchasing restricted cranberries. These include prices at which growers are selling their cranberries to handlers; prices at which handlers are selling fresh berries to dealers; prices at which cranberries are being sold to processors; and prices at which the Committee has purchased free berries to replace released restricted berries.

This action adds two criteria to the list—the prices at which handlers are selling cranberry concentrate and growers' costs of production. Both of these items are relevant to consider in determining a fair market value. Consideration of these criteria by the Committee would benefit handlers.

Under the current buy-back provisions, handlers are required to deposit with the Committee the full market value of the berries they are asking to be released. This decision proposes a different payment schedule so that handlers will not have to make a large cash payment prior to the sale of their restricted cranberries. Twenty percent of the total amount would be due at the time of the request, with an additional 10 percent due each month thereafter. This change will facilitate handlers buying back their restricted berries by reducing the costs of such a venture. Thus, handlers should benefit.

If the Committee is unable to purchase free berries under the buy-back system, it is currently required to refund the money back to all handlers proportionate to the amount each handler withheld under regulation. USDA modified that provision to provide that the money be returned to the handler who deposited it for distribution to the growers whose fruit was sold. This should benefit growers whose fruit was sold. Additionally, this change could provide an incentive for handlers to make available free cranberries for purchase to replace restricted cranberries that are released under the buy-back provisions. For these reasons, this change should benefit the cranberry industry.

Paid Advertising

The amendment to add authority for paid advertising under the research and development provisions of the order will provide the Committee the flexibility to use paid advertising to assist, improve, or promote the marketing, distribution, and consumption of cranberries in either its export or domestic programs. The authority for authorizing paid advertising under the cranberry marketing order was added to the Act in October, 1999.

If a paid advertising program is recommended by the Committee, it could entail an increase in assessments to administer the program, which would have an impact on handlers. According to testimony, it is the Committee's intent to use paid advertising sparingly as a means to provide consumers with relevant information to the health-related benefits of cranberries. Paid advertising authority is viewed as an additional tool available to the Committee to meet its objectives of increasing demand and consumption of cranberries and cranberry products. It is anticipated that any additional costs incurred to all handlers, both large and small, would be outweighed by the benefits of increasing demand for cranberries. Any paid advertising program and increase of assessment must proceed through notice and comment rulemaking before it is implemented.

Definition of Handle

The amendment to modify the definition of handle under the order will clarify that the transporting of fresh cranberries to foreign markets other than Canada is also considered handling. This change will merely clarify language.

The amendment will also modify the definition by including the cold storage or freezing of withheld cranberries as an exemption from handling for the purpose of temporary cold storage during periods when withholding provisions are in effect prior to their disposal. The provision already applies this exemption to excess cranberries under the producer allotment program and it was determined that handlers could benefit from this provision under a withholding program as well. This will benefit large and small handlers by allowing temporary storage of withheld cranberries, which could be critical during a withholding volume regulation.

Reporting Requirements

The amendment to modify the reporting requirements will relocate a paragraph on a grower reporting requirement to the section on Reports for ease of referencing and is only administrative in nature.

The amendment will also add more specific information under the grower reporting provisions to incorporate additional information necessary from growers regarding sales history and transfer of allotment. This will assist the Committee in assembling the most accurate and effective information as possible. Orders with producer allotment programs are unique in that specific information is needed from growers in order to implement a program. Both large and small growers benefit from reporting the information by being provided accurate and timely sales histories that reflect their production and allow equitable allotments to be determined on their acreage during years of volume regulation. The failure of growers to file these reports could be detrimental to them in the event volume regulations are implemented. Any additional reporting requirements resulting from adoption of this proposed amendment would be submitted to the Office of Management and Budget prior to implementation.

The amendment will also include that handlers report on the quantities of excess cranberries as well as withheld cranberries. This is a clarification and administrative in nature. The amendment will also simplify and clarify the provision on verification of reports. The amendment should be favorable to large and small growers.

Obsolete Provision

The amendment to delete an obsolete provision relating to preliminary regulation is administrative in nature. There would be no impact on growers or handlers.

Amendments Not Recommended for Adoption

Four proposed amendments were not recommended for adoption. Therefore, there would be no economic impact resulting from such proposals.

All of these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. Accordingly, it is determined that the benefits of implementing these amendments will outweigh any associated costs. Costs are not anticipated to be significant.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 FR U.S.C. 35), any reporting and recordkeeping provisions that would be generated by implementing the proposed amendments would be submitted to the Office of Management and Budget (OMB).

The collection of information under the marketing order would not be affected by these amendments to the marketing order. Current information collection requirements for part 929 are approved under OMB No. 0581–0189, Generic OMB Fruit Crops.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings to consider order amendments as well as the hearing dates were widely publicized throughout the cranberry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Order Amending the Order Regulating the Handling of Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and determinations upon the basis of the hearing record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby further amended, regulate the handling of cranberries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as amended, and as hereby further amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended and as hereby further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of cranberries grown in the production area; and

(5) All handling of cranberries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.*

It is necessary and in the public interest to make these amendments to the order effective not later than one day after publication in the **Federal Register**.

A later effective date would unnecessarily delay implementation of the amendments modifying the Committee's marketing policy and sales histories which will soon be under consideration for the upcoming season by the Committee. Therefore, making the effective date one day after publication in the **Federal Register** will allow the amendments, which are expected to be beneficial to the industry, to be implemented as soon as possible.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping cranberries covered by the order as hereby amended) who, during the period September 1, 2003, through August 31, 2004, handled 50 percent or more of the volume of such cranberries covered by said order, as hereby amended, have signed an amended marketing agreement; and

(2) The issuance of this amendatory order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period September 1, 2003, through August 31, 2004 (which has been deemed to be a representative period), have been engaged within the production area in the production of such cranberries, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

(3) The issuance of this amendatory order is favored or approved by processors who, during the period September 1, 2003, through August 31, 2004 (which has been deemed to be a representative period), have engaged in canning or freezing cranberries for market and have frozen or canned more than 50 percent of the total volume of cranberries regulated which were canned or frozen within the production area.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and order further amending the order contained in the Secretary's Decision issued by the Administrator on November 30, 2004, and published in the **Federal Register** on December 1, 2004, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ 1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 929.10 by revising paragraphs (a)(2) and (b)(4) to read as follows:

§ 929.10 Handle.

(a) * * *

(2) To sell, consign, deliver, or transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way to place fresh cranberries in the current of commerce within the production area or between the production area and any point outside thereof.

(b) * * *

(4) The cold storage or freezing of excess or restricted cranberries for the purpose of temporary storage during periods when an annual allotment percentage and/or a handler withholding program is in effect prior to their disposal, pursuant to §§ 929.54 or 929.59.

■ 3. Add a new § 929.28 to read as follows:

§ 929.28 Redistricting and Reapportionment.

(a) The committee, with the approval of the Secretary, may reestablish districts within the production area and reapportion membership among the districts. In recommending such changes, the committee shall give consideration to:

(1) The relative volume of cranberries produced within each district.

(2) The relative number of cranberry producers within each district.

(3) Cranberry acreage within each district.

(4) Other relevant factors.

(b) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation and operation of this section.

■ 4. Amend § 929.45 by revising paragraph (a) to read as follows:

§ 929.45 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and market development projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cranberries. The expense of such projects shall be paid from funds collected pursuant to § 929.41, or from such other funds as approved by the Secretary.

* * * * *

■ 5. Revise § 929.46 to read as follows:

§ 929.46 Marketing policy.

Each season prior to making any recommendation pursuant to § 929.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the crop year. Such marketing policy shall contain the following information for the current crop year:

(a) The estimated total production of cranberries;

(b) The expected general quality of such cranberry production;

(c) The estimated carryover, as of September 1, of frozen cranberries and other cranberry products;

(d) The expected demand conditions for cranberries in different market outlets;

(e) The recommended desirable total marketable quantity of cranberries including a recommended adequate carryover into the following crop year of frozen cranberries and other cranberry products;

(f) Other factors having a bearing on the marketing of cranberries.

§ 929.47 [Removed]

■ 6. Remove § 929.47.

■ 7. Revise § 929.48 to read as follows:

§ 929.48 Sales history.

(a) A sales history for each grower shall be computed by the committee in the following manner:

(1) For growers with acreage with 6 or more years of sales history, the sales history shall be computed using an average of the highest four of the most recent six years of sales.

(2) For growers with 5 years of sales history from acreage planted or replanted 2 years prior to the first harvest on that acreage, the sales history is computed by averaging the highest 4 of the 5 years.

(3) For growers with 5 years of sales history from acreage planted or replanted 1 year prior to the first harvest on that acreage, the sales history is computed by averaging the highest 4 of the 5 years and in a year prior to a year of a producer allotment volume regulation shall be adjusted as provided in paragraph (a)(6) of this section.

(4) For a grower with 4 years or less of sales history, the sales history shall be computed by dividing the total sales from that acreage by 4 and in a year prior to a year of a producer allotment volume regulation shall be adjusted as provided in paragraph (a)(6) of this section.

(5) For growers with acreage having no sales history, or for the first harvest of replanted acres, the sales history will be the average first year yields (depending on whether first harvested 1 or 2 years after planting or replanting) as established by the committee and multiplied by the number of acres.

(6) In a year prior to a year of a producer allotment volume regulation, in addition to the sales history computed in accordance with paragraphs (a)(3) and (a)(4) of this section, additional sales history shall be assigned to growers using the formula x=(a–b)c. The letter ''x'' constitutes the additional number of barrels to be added to the grower's sales history. The value ''a'' is the expected yield for the forthcoming year harvested acreage as established by the committee. The value ''b'' is the total sales from that acreage as established by the committee divided by four. The value ''c'' is the number of acres planted or replanted in the specified year. For acreage with five years of sales history: a = the expected yield for the forthcoming sixth year harvested acreage (as established by the committee); b = an average of the most recent 4 years of expected yields (as established by the committee); and c = the number of acres with 5 years of sales history.

(b) A new sales history shall be calculated for each grower after each crop year, using the formulas established in paragraph (a) of this section, or such other formula(s) as determined by the committee, with the approval of the Secretary.

(c) The committee, with the approval of the Secretary, may adopt regulations to change the number and identity of years to be used in computing sales histories, including the number of years to be used in computing the average. The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

(d) Sales histories, starting with the crop year following adoption of this part, shall be calculated separately for fresh and processed cranberries. The amount of fresh fruit sales history may be calculated based on either the delivered weight of the barrels paid for by the handler (excluding trash and unusable fruit) or on the weight of the fruit paid for by the handler after cleaning and sorting for the retail market. Handlers using the former calculation shall allocate delivered fresh fruit subsequently used for processing to growers' processing sales. Fresh fruit sales history, in whole or in part, may be added to process fruit sales history with the approval of the committee in the event that the grower's fruit does not qualify as fresh fruit at delivery.

(e) The committee may recommend rules and regulations, with the approval of the Secretary, to adjust a grower's sales history to compensate for catastrophic events that impact the grower's crop.

■ 8. Revise § 929.49 to read as follows:

929.49 Marketable quantity, allotment percentage, and annual allotment.

(a) Marketable quantity and allotment percentage. If the Secretary finds, from the recommendation of the committee or from other available information, that limiting the quantity of cranberries purchased from or handled on behalf of growers during a crop year would tend to effectuate the declared policy of the

Act, the Secretary shall determine and establish a marketable quantity for that crop year.

(b) The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's sales history, established pursuant to § 929.48. Such allotment percentage shall be established by the Secretary and shall equal the marketable quantity divided by the total of all growers' sales histories including the estimated total sales history for new growers. Except as provided in paragraph (g) of this section, no handler shall purchase or handle on behalf of any grower cranberries not within such grower's annual allotment.

(c) In any crop year in which the production of cranberries is estimated by the committee to be equal to or less than its recommended marketable quantity, the committee may recommend that the Secretary increase or suspend the allotment percentage applicable to that year. In the event it is found that market demand is greater than the marketable quantity previously set, the committee may recommend that the Secretary increase such quantity.

(d) *Issuance of annual allotments.* The committee shall require all growers to qualify for such allotment by filing with the committee a form wherein growers include the following information:

(1) The amount of acreage which will be harvested;

(2) A copy of any lease agreement covering cranberry acreage;

(3) The name of the handler(s) to whom their annual allotment will be delivered;

(4) Such other information as may be necessary for the implementation and operation of this section.

(e) On or before such date as determined by the committee, with the approval of the Secretary, the committee shall issue to each grower an annual allotment determined by applying the allotment percentage established pursuant to paragraph (b) of this section to the grower's sales history.

(f) On or before such date as determined by the committee, with the approval of the Secretary, in which an allotment percentage is established by the Secretary, the committee shall notify each handler of the annual allotment that can be handled for each grower whose total crop will be delivered to that handler. In cases where a grower delivers a crop to more than one handler, the grower must specify how the annual allotment will be apportioned among the handlers. If a grower does not specify how their annual allotment is to be apportioned among the handlers, the Committee will apportion such annual allotment equally among those handlers they are delivering their crop to.

(g) Growers who do not produce cranberries equal to their computed annual allotment shall transfer their unused allotment to such growers' handlers unless it is transferred to another grower in accordance with § 929.50(b) or if it is not assigned in accordance with paragraph (i) of this section. The handler shall equitably allocate the unused annual allotment to growers with excess cranberries who deliver to such handler. Unused annual allotment remaining after all such transfers have occurred shall be reported and transferred to the committee by such date as established by the committee with the approval of the Secretary.

(h) Handlers who receive cranberries more than the sum of their growers' annual allotments have ''excess cranberries,'' pursuant to § 929.59, and shall so notify the committee. Handlers who have remaining unused allotment pursuant to paragraph (g) of this section are ''deficient'' and shall so notify the committee. The committee shall allocate unused allotment to all handlers having excess cranberries, proportional to each handler's total allotment.

(i) Growers who decide not to grow a crop, during any crop year in which a volume regulation is in effect, may choose not to assign their allotment to a handler.

(j) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

■ 9. Revise § 929.50 to read as follows:

§ 929.50 Transfers of Sales Histories and Annual Allotments.

(a) *Leases and sales of cranberry acreage.* (1) *Total or partial lease of cranberry acreage.* When total or partial lease of cranberry acreage occurs, sales history attributable to the acreage being leased shall remain with the lessor.

(2) *Total sale of cranberry acreage.* When there is a sale of a grower's total cranberry producing acreage, the committee shall transfer all owned acreage and all associated sales history to such acreage to the buyer. The seller and buyer shall file a sales transfer form providing the committee with such information as may be requested so that the buyer will have immediate access to the sales history computation process.

(3) *Partial sale of cranberry acreage.* When less than the total cranberry producing acreage is sold, sales history associated with that portion of the acreage being sold shall be transferred with the acreage. The seller shall provide the committee with a sales transfer form containing, but not limited to the distribution of acreage and the percentage of sales history, as defined in § 929.48(a)(1), attributable to the acreage being sold.

(4) No sale of cranberry acreage shall be recognized unless the committee is notified in writing.

(b) *Allotment Transfers.* During a year of volume regulation, a grower may transfer all or part of his/her allotment to another grower. If a lease is in effect the lessee shall receive allotment from lessor attributable to the acreage leased. *Provided,* That the transferred allotment shall remain assigned to the same handler and that the transfer shall take place prior to a date to be recommended by the Committee and approved by the Secretary. Transfers of allotment between growers having different handlers may occur with the consent of both handlers.

(c) The committee may establish, with the approval of the Secretary, rules and regulations, as needed, for the implementation and operation of this section.

■ 10. Revise § 929.51 to read as follows:

§ 929.51 Recommendations for regulation.

(a) Except as otherwise provided in paragraph (b) of this section, if the committee deems it advisable to regulate the handling of cranberries in the manner provided in § 929.52, it shall so recommend to the Secretary by the following appropriate dates:

(1) An allotment percentage regulation must be recommended by no later than March 1;

(2) A handler withholding program must be recommended by not later than August 31. Such recommendation shall include the free and restricted percentages for the crop year;

(3) If both programs are recommended in the same year, the Committee shall submit with its recommendation an economic analysis to the USDA prior to March 1 of the year in which the programs are recommended.

(b) An exception to the requirement in paragraph (a)(1) of this section may be made in a crop year in which, due to unforeseen circumstances, a producer allotment regulation is deemed necessary subsequent to the March 1 deadline.

(c) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply of and demand for cranberries during the period when it is proposed

that such regulation should be imposed. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is based and any other information the Secretary may request.

■ 11. Revise § 929.52 to read as follows:

§ 929.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cranberries whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the Act. Such regulation shall limit the total quantity of cranberries which may be handled during any fiscal period by fixing the free and restricted percentages, applied to cranberries acquired by handlers in accordance with § 929.54, and/or by establishing an allotment percentage in accordance with § 929.49.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to handlers.

■ 12. Revise § 929.54 to read as follows:

§ 929.54 Withholding.

(a) Whenever the Secretary has fixed the free and restricted percentages for any fiscal period, as provided for in § 929.52(a), each handler shall withhold from handling a portion of the cranberries acquired during such period. The withheld portion shall be equal to the restricted percentage multiplied by the volume of marketable cranberries acquired. Such withholding requirements shall not apply to any lot of cranberries for which such withholding requirement previously has been met by another handler in accordance with § 929.55.

(b) The committee, with the approval of the Secretary, shall prescribe the manner in which, and date or dates during the fiscal period by which, handlers shall have complied with the withholding requirements specified in paragraph (a) of this section.

(c) Withheld cranberries may meet such standards of grade, size, quality, or condition as the committee, with the approval of the Secretary, may prescribe. The Federal or Federal-State Inspection Service may inspect all such cranberries. A certificate of such inspection shall be issued which shall include the name and address of the handler, the number and type of containers in the lot, the location where the lot is stored, identification marks (including lot stamp, if used), and the quantity of cranberries in such lot that meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit to the committee a copy of the certificate of inspection issued with respect to such cranberries.

(d) Any handler who withholds from handling a quantity of cranberries in excess of that required pursuant to paragraph (a) of this section shall have such excess quantity credited toward the next fiscal year's withholding obligation, if any—provided that such credit shall be applicable only if the restricted percentage established pursuant to § 929.52 was modified pursuant to § 929.53; to the extent such excess was disposed of prior to such modification; and after such handler furnishes the committee with such information as it prescribes regarding such withholding and disposition.

(e) The Committee, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

■ 13. Revise § 929.56 to read as follows:

§ 929.56 Special provisions relating to withheld (restricted) cranberries.

(a) A handler shall make a written request to the committee for the release of all or part of the cranberries that the handler is withholding from handling pursuant to § 929.54(a). Each request shall state the quantity of cranberries for which release is requested and shall provide such additional information as the committee may require. Handlers may replace the quantity of withheld cranberries requested for release as provided under either paragraph (b) or (c) of this section.

(b) The handler may contract with another handler for an amount of free cranberries to be converted to restricted cranberries that is equal to the volume of cranberries that the handler wishes to have converted from his own restricted cranberries to free cranberries.

(1) The handlers involved in such an agreement shall provide the committee with such information as may be requested prior to the release of any restricted cranberries.

(2) The committee shall establish guidelines to ensure that all necessary documentation is provided to the committee, including but not limited to, the amount of cranberries being converted and the identities of the handlers assuming the responsibility for withholding and disposing of the free cranberries being converted to restricted cranberries.

(3) Cranberries converted to replace released cranberries may be required to be inspected and meet such standards as may be prescribed for withheld cranberries prior to disposal.

(4) Transactions and agreements negotiated between handlers shall include all costs associated with such transactions including the purchase of the free cranberries to be converted to restricted cranberries and all costs associated with inspection (if applicable) and disposal of such restricted cranberries. No costs shall be incurred by the committee other than for the normal activities associated with the implementation and operation of a volume regulation program.

(5) Free cranberries belonging to one handler and converted to restricted cranberries on the behalf of another handler shall be reported to the committee in such manner as prescribed by the committee.

(c) Except as otherwise directed by the Secretary, as near as practicable to the beginning of the marketing season of each fiscal period with respect to which the marketing policy proposes regulation pursuant to § 929.52(a), the committee shall determine the amount per barrel each handler shall deposit with the committee for it to release to him, in accordance with this section, all or part of the cranberries he is withholding; and the committee shall give notice of such amount of deposit to handlers. Such notice shall state the period during which such amount of deposit shall be in effect. Whenever the committee determines that, by reason of changed conditions or other factors, a different amount should therefore be deposited for the release of withheld cranberries, it shall give notice to handlers of the new amount and the effective period thereof. Each determination as to the amount of deposit shall be on the basis of the committee's evaluation of the following factors:

(1) The prices at which growers are selling cranberries to handlers,

(2) The prices at which handlers are selling fresh market cranberries to dealers,

(3) The prices at which cranberries are being sold for processing in products,

(4) The prices at which handlers are selling cranberry concentrate,

(5) The prices the committee has paid to purchase cranberries to replace released cranberries in accordance with this section, and

(6) The costs incurred by growers in producing cranberries.

(7) Each request for release of withheld cranberries shall include, in addition to all other information as may be prescribed by the committee, the quantity of cranberries the release is

requested and shall be accompanied by a deposit (a cashier's or certified check made payable to the Cranberry Marketing Committee) in an amount equal to the twenty percent of the amount determined by multiplying the number of barrels stated in the request by the then effective amount per barrel as determined in paragraph (c).

(8) Subsequent deposits equal to, but not less than, the ten percent of the remaining outstanding balance shall be payable to the committee on a monthly basis commencing on January 1, and concluding by no later than August 31 of the fiscal period.

(9) If the committee determines such a release request is properly filled out, is accompanied by the required deposit, and contains a certification that the handler is withholding such cranberries, it shall release to such handler the quantity of cranberries specified in his request.

(d) Funds deposited for the release of withheld cranberries, pursuant to paragraph (c) of this section, shall be used by the committee to purchase from handlers unrestricted (free percentage) cranberries in an aggregate amount as nearly equal to, but not in excess of, the total quantity of the released cranberries as it is possible to purchase to replace the released cranberries.

(e) All handlers shall be given an equal opportunity to participate in such purchase of unrestricted (free percentage) cranberries. If a larger quantity is offered than can be purchased, the purchases shall be made at the lowest price possible. If two or more handlers offer unrestricted (free percentage) cranberries at the same price, purchases from such handlers shall be in proportion to the quantity of their respective offerings insofar as such division is practicable. The committee shall dispose of cranberries purchased as restricted cranberries in accordance with § 929.57. Any funds received by the committee for cranberries so disposed of, which are in excess of the costs incurred by the committee in making such disposition, will accrue to the committee's general fund.

(f) In the event any portion of the funds deposited with the committee pursuant to paragraph (c) of this section cannot, for reasons beyond the committee's control, be expended to purchase unrestricted (free percentage) cranberries to replace those withheld cranberries requested to be released, such unexpended funds shall, after deducting expenses incurred by the committee, be refunded to the handler who deposited the funds. The handler shall equitably distribute such refund among the growers delivering to such handler.

(g) Inspection for restricted (withheld) cranberries released to a handler is not required.

(h) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation of this section. Such rules and regulations may include, but are not limited to, revisions in the payment schedule specified in paragraphs (c)(7) and (c)(8) of this section.

■ 14. Revise § 929.58 to read as follows:

§ 929.58 Exemptions.

(a) Upon the basis of the recommendation and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements pursuant to this part the handling of cranberries in such minimum quantities as the committee, with the approval of the Secretary, may prescribe.

(b) Upon the basis of the recommendation and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements pursuant to this part the handling of such forms or types of cranberries as the committee, with the approval of the Secretary, may prescribe. Forms of cranberries could include cranberries intended for fresh sales or organically grown cranberries.

(c) The committee, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cranberries handled under the provisions of this section are handled only as authorized.

■ 15. Revise § 929.61 to read as follows:

§ 929.61 Outlets for excess cranberries.

(a) *Noncommercial outlets.* Excess cranberries may be disposed of in noncommercial outlets that the committee finds, with the approval of the Secretary, meet the requirements outlined in paragraph (c) of this section. Noncommercial outlets include, but are not limited to:

(1) Charitable institutions; and

(2) Research and development projects.

(b) *Noncompetitive outlets.* Excess cranberries may be sold in outlets that the committee finds, with the approval of the Secretary, are noncompetitive with established markets for regulated cranberries and meet the requirements outlined in paragraph (c) of this section. Noncompetitive outlets include but are not limited to:

(1) Any nonhuman food use; and

(2) Other outlets established by the committee with the approval of the Secretary.

(c) *Requirements.* The handler disposing of or selling excess cranberries into noncompetitive or noncommercial outlets shall meet the following requirements, as applicable:

(1) *Charitable institutions.* A statement from the charitable institution shall be submitted to the committee showing the quantity of cranberries received and certifying that the institution will consume the cranberries;

(2) *Research and development projects.* A report shall be given to the committee describing the project, quantity of cranberries contributed, and date of disposition;

(3) *Nonhuman food use.* Notification shall be given to the committee at least 48 hours prior to such disposition;

(4) *Other outlets established by the committee with the approval of the Secretary.* A report shall be given to the committee describing the project, quantity of cranberries contributed, and date of disposition.

(d) The storage and disposition of all excess cranberries withheld from handling shall be subject to the supervision and accounting control of the committee.

(e) The committee, with the approval of the Secretary, may establish rules and regulations for the implementation and operation of this section.

■ 16. Revise § 929.62 to read as follows:

§ 929.62 Reports.

(a) *Grower report.* Each grower shall file a report with the committee by January 15 of each crop year, or such other date as determined by the committee, with the approval of the Secretary, indicating the following:

(1) Total acreage harvested and whether owned or leased.

(2) Total commercial cranberry sales in barrels from such acreage.

(3) Amount of acreage either in production, but not harvested or taken out of production and the reason(s) why.

(4) Amount of new or replanted acreage coming into production.

(5) Name of the handler(s) to whom commercial cranberry sales were made.

(6) Such other information as may be needed for implementation and operation of this section.

(b) *Inventory.* Each handler engaged in the handling of cranberries or cranberry products shall, upon request of the committee, file promptly with the committee a certified report, showing such information as the committee shall specify with respect to any cranberries

and cranberry products which were held by them on such date as the committee may designate.

(c) *Receipts.* Each handler shall, upon request of the committee, file promptly with the committee a certified report as to each quantity of cranberries acquired during such period as may be specified, and the place of production.

(d) *Handling reports.* Each handler shall, upon request of the committee, file promptly with the committee a certified report as to the quantity of cranberries handled during any designated period or periods.

(e) *Withheld and excess cranberries.* Each handler shall, upon request of the committee, file promptly with the committee a certified report showing, for such period as the committee may specify, the total quantity of cranberries withheld from handling or held in excess, in accordance with §§ 929.49 and 929.54, the portion of such withheld or excess cranberries on hand, and the quantity and manner of disposition of any such withheld or excess cranberries disposed of.

(f) *Other reports.* Upon the request of the committee, with the approval of the Secretary, each handler shall furnish to the committee such other information with respect to the cranberries and cranberry products acquired and disposed of by such person as may be necessary to enable the committee to exercise its powers and perform its duties under this part.

(g) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation and operation of this section.

■ 17. Revise § 929.64 to read as follows:

§ 929.64 Verification of reports and records.

The committee, through its duly authorized agents, during reasonable business hours, shall have access to any handler's premises where applicable records are maintained for the purpose of assuring compliance and checking and verifying records and reports filed by such handler.

Dated: February 8, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–2878 Filed 2–14–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV04–930–2 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2004–2005 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes final free and restricted percentages for the 2004–2005 crop year. The percentages are 72 percent free and 28 percent restricted and would establish the proportion of tart cherries from the 2004 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board, the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Oregon, Utah, Washington, and Wisconsin.

DATES: *Effective Date:* February 16, 2005. This final rule applies to all 2004–2005 crop year restricted cherries until they are properly disposed of in accordance with marketing order requirements.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 6C02, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734–5243 or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491 or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule will establish final free and restricted percentages for tart cherries for the 2004–2005 crop year, beginning July 1, 2004, through June 30, 2005.

This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the USDA would rule on the petition.

The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. Handlers handling tart cherries produced in the regulated districts are subject to these regulations. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of

the order and § 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; District seven—Utah; District eight—Washington, and District nine—Wisconsin. Tart cherries produced in Districts five and six (Oregon and Pennsylvania, respectively) will not be regulated for the 2004–2005 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Oregon and Pennsylvania, the tart cherries produced in those districts and handled by handlers will not be subject to volume regulation during the 2004–2005 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tend to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order prescribes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years (taking into account sales of exempt and restricted percentage cherries qualifying for diversion credit) to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of USDA. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure (referred to as the current crop year requirement) from the current year's USDA crop forecast or by an average of such other crop estimates the Board votes to use. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the crop forecast(s) for the regulated districts to obtain a preliminary restricted percentage, rounded to the nearest whole number, for the regulated districts. If subtracting the current crop year requirement, from the current crop forecast, results in a negative number, the Board is required to establish a preliminary free tonnage percentage of 100 percent with a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 24, 2004, and computed, for the 2004–2005 crop year, an optimum supply volume of 177 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 215 million pounds; a 24 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 177 million pounds which resulted in 2004–2005 tonnage requirements (adjusted optimum supply) of 153 million pounds. The carryin figure reflects the amount of cherries that handlers actually had in inventory at the beginning of the crop year. Subtracting the adjusted optimum supply of 153 million pounds from the 215 million pound USDA crop estimate (for the entire production area) results in a surplus of 62 million pounds of tart cherries. The surplus was then divided by the production in the regulated districts (207 million pounds) and this resulted in a restricted percentage of 30 percent for the 2004–2005 crop year. The free percentage was 70 percent (100 percent minus 30 percent). The Board established these percentages and announced them to the industry as required by the order.

The table below summarizes the preliminary percentage computations made by the Board at its June meeting for the 2004–2005 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three crop years	177
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	177
Preliminary Percentages:	
(4) USDA crop estimate	215
(5) Carryin held by handlers as of July 1, 2004	24
(6) Adjusted optimum supply for current crop year (Item 3 minus Item 5)	153
(7) Surplus (restricted tonnage) (Item 4 minus Item 6)	62
(8) USDA crop estimate for regulated districts	207

	Percentages	
	Free	Restricted
(9) Preliminary percentages (Item 7 divided by Item 8 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	70	30

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry. No interim adjustments were made.

USDA establishes final free and restricted percentages through the informal rulemaking process. These percentages make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between 100 percent and any final restricted percentage designated by USDA is the final free percentage. The Board met on September 10, 2004, to recommend final free and restricted percentages.

The actual production reported by the Board for the entire production area was 209 million pounds, which is a 6 million pound decrease from the USDA crop estimate of 215 million pounds.

A 25 million pound carryin (based on handler reports) was subtracted from the Board's optimum supply of 177 million pounds, yielding an adjusted optimum supply for the current crop year of 152 million pounds. The adjusted optimum supply of 152 million pounds was subtracted from the actual production of 209 million pounds, which resulted in a 57 million pound surplus. The total surplus of 57 million pounds was then divided by the 202 million-pound volume of tart cherries produced in the regulated districts. This results in a 28 percent restricted percentage and a corresponding 72 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2004–2005 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	177
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	177
Final Percentages:	
(4) Board reported production	209
(5) Carryin held by handlers as of July 1, 2004.	25
(6) Adjusted optimum supply (Item 3 minus Item 5)	152
(7) Surplus (restricted tonnage) (Item 4 minus Item 6)	57
(8) Production in regulated districts	202

	Percentages	
	Free	Restricted
(9) Final Percentages (Item 7 divided by Item 8 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	72	28

The Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of final percentages which release 100 percent of the optimum supply volume and the additional release of tart cherries provided under § 930.50(g). A release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season.

The Board recommended that this release be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are available for free use and can be shipped to any market the handler desires.

Approximately 18 million pounds will be made available to handlers this season in accordance with Department Guidelines. These cherries would be made available to every handler and released in proportion to the handler's percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount remains in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers

and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1998/99 through 2003/04, approximately 92 percent of the U.S. tart cherry crop, or 252.8 million pounds, was processed annually. Of the 252.8 million pounds of tart cherries processed, 59 percent was frozen, 29 percent was canned, and 12 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 37,000 acres in 2003/04. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 73 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2004/05 crop is moderate in size at 209 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. The problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These percentages are only applied to states or districts with a 3-year average of production greater than six million pounds, and to states or districts in which the production is 50 percent or more of the previous 5-year processed production average.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the costs for storage, interest, and handling of the stored cherries.

The price that growers' receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, along with the districts in Utah, New York, Washington, and Wisconsin are the restricted areas for this crop year and their combined total production is 202 million pounds. A 28 percent restriction means 145 million pounds is available to be shipped to primary markets from these five states. Production levels of 3.9 million pounds for Oregon, and 2.8 million pounds for Pennsylvania (the unregulated areas in 2004–2005), result in an additional 6.7 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This will result in an additional 18 million pounds being available for the primary market. The 145 million pounds from Michigan, New York, Utah, Washington, and Wisconsin, the approximately 7 million pounds from the other producing states, the 18 million pound release, and the 25 million pound carryin inventory gives a total of 195 million pounds being available for the primary markets.

The econometric model is used to estimate the difference between grower prices with and without restrictions. With volume controls, grower prices are estimated to be approximately $0.08 higher than without volume controls.

The use of volume controls is estimated to have a positive impact on

growers' total revenues. With restriction, revenues are estimated to be $10.7 million higher than without restrictions. The without restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments. This scenario is likely since the total available supply in this crop year is very similar to last year's when there was a full release of the reserve pool, and handlers appear to be encouraging growers to deliver their entire crop this year. Although carryout inventories are 25 million pounds, only 1 million pounds is in the reserve while 24 million pounds are held in free inventories held by packers.

It is concluded that the 28 percent volume control would not unduly burden producers and handlers, particularly smaller growers and handlers. The 28 percent restriction would be applied in Michigan, New York, Utah, Washington, and Wisconsin. The growers and handlers in the other two states covered under the marketing order will benefit from the market stability anticipated to result from this restriction.

Recent grower prices have been as high as $0.44 per pound in the 2002–2003 crop year. At current production and yield levels, the cost of production is reported to be $0.43 per pound. Thus, the estimated $0.43 per pound received by growers under the regulation scenario just covers the cost of production. Under the no regulation scenario, estimated grower prices would not cover the total cost of production. Lower yields and production result in higher costs of production. Overhead or fixed costs are spread over lower levels of production which results in higher costs of production per acre. Even in years when no production is harvested, growers face fixed costs of production and additional costs associated with maintaining the orchard for future years of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories would have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0033 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002–2003 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2004–2005 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2004 of the free and restricted percentages established by this rule (72 percent free and 28 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2004–2005 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule will not change those requirements.

A proposed rule concerning this action was published in the **Federal Register** on December 10, 2004, (69 FR 71744). Copies of the rule were mailed or sent via facsimile to all Board members and handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending January 10, 2005, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period in response to the proposal. The commenter stated that the percentages were too restrictive. The commenter was of the view that the percentages were outdated, restricted trade, and should be removed. The commenter also believed that the Board should be terminated.

The marketing order program including this rule is authorized under the authority of the Agricultural Marketing Agreement Act of 1937. The Board recommended the percentages based on its review of sales data, inventory data, current crop forecasts, and market conditions. It calculated an optimum supply which represents the desirable volume of tart cherries needed

to meet primary market needs. Further, the Board, at a later date, can recommend a release of the reserve to provide more tart cherries to satisfy market needs as may be necessary.

Accordingly, no changes will be made to the rule as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping cherries from the 2004–2005 crop. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a thirty-day comment period was provided for in the proposed rule, and the comment received has been addressed herein.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.254 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.254 Final free and restricted percentages for the 2004–2005 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2004, which shall be free and restricted, respectively, are designated as follows: Free percentage, 72 percent and restricted percentage, 28 percent.

Dated: February 8, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–2879 Filed 2–14–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 1944

Housing Application Packaging Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agency is revising its internal Housing Application Packaging Grants regulation in order to correct an erroneous reference to the debarment and suspension regulation. This action is necessary since the existing regulation does not accurately reflect the current information. The intended effect is to remove the incorrect reference to the regulation.

DATES: *Effective Date:* This rule is effective February 15, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Program Analyst, Program Support Staff, Rural Development, Room 6900 South Building, Stop 0761, 1400 Independence Ave., SW., Washington, DC 20250–1570. Telephone: (202) 690–4492, FAX: (202) 690–4335, e-mail: *thomas.dickson@usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management. This action is not published for prior notice and comment under the Administrative Procedure Act since it involves only internal Agency management and publication for comment is unnecessary and contrary to the public interest.

Program Affected

The program affected is listed in catalog of Federal Domestic Assistance under 10.442—Housing Application Packaging Grants.

Intergovernmental Consultation

Programs with Catalog of Federal Domestic Assistance the number 10.442 are not subject to the provisions of Executive Order 12372.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative Division (7 CFR part 11) must be exhausted before litigation against the Department is instituted.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0575–0157 in accordance with the Paperwork Reduction Act of 1995. No person is required to respond to a collection of information unless it displays a valid OMB control number. This rule does not impose any new information collection requirements from those approved by OMB.

Regulatory Flexibility Act

The Administrator of the Rural Housing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule. This rule contains no

Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, the rule is not subject to the requirements of section 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The Agencies have determined that this final action does not constitute a major Federal action significantly affecting the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Background

In November 2003, the **Federal Register** published a Final Rule that implemented changes to the governmentwide nonprocurment debarment and suspension common rule (NCR) and the associated rule on drug-free workplace requirements. The NCR set forth the common policies and procedures that Federal Executive branch agencies must use in taking suspension or debarment actions. It also established procedures for participants and Federal agencies in entering covered transactions. Following the procedures set forth in the NCR will help ensure that the agency action complies with due process standards and provides the public with uniform procedures.

List of Subjects in 7 CFR Part 1944

Administrative practice and procedure, Grant programs, Housing and community development, Loan Programs, Migrant labor, Nonprofit organizations, Reporting requirements, Rural Housing.

■ For the reasons set forth in the summary, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

■ 1. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart B—Housing Application Packaging Grants

■ 2. Section 1944.74 is revised to read as follows:

§ 1944.74 Debarment or Suspension.

Certified packagers whose actions or acts warrant they not be allowed to participate in the program are to be investigated in accordance with agency procedures (available in any Rural Development office).

Dated: January 18, 2005.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 05–2903 Filed 2–14–05; 8:45 am]

BILLING CODE 3410–XV–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in March 2005. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: March 1, 2005.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during March 2005, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during March 2005, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during March 2005.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 3.80 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent a decrease (from those in effect for February 2005) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for February 2005) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during March 2005, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 137, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
137	3–1–05	4–1–05	2.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 137, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
137	3–1–05	4–1–05	2.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*		*	*	*	
March 2005	.0380	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of February 2005.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–2858 Filed 2–14–05; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–007]

Drawbridge Operation Regulations: Fore River, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Casco Bay Bridge, mile 1.5, across the Fore River between Portland and South Portland, Maine. Under this temporary deviation, from February 28, 2005 through March 4, 2005, bridge openings between the hours of 6 a.m. and 6 p.m. will require a 24-hour advance notice. The bridge will open on signal at all other times. This temporary deviation is necessary to facilitate mechanical repairs at the bridge.

DATES: This deviation is effective from February 28, 2005 through March 4, 2005.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Casco Bay Bridge has a vertical clearance in the closed position of 55 feet at mean high water and 64 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.5.

The bridge owner, Maine Department of Transportation, requested a temporary deviation from the drawbridge operation regulations to facilitate scheduled mechanical maintenance, span lock repairs, at the bridge.

Under this temporary deviation from February 28, 2005 through March 4, 2005, bridge openings between the hours of 6 a.m. and 6 p.m. will require a 24-hour advance notice. The bridge will open on signal at all other times.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: January 31, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–2870 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Western Alaska–05–002]

RIN 1625–AA00

Safety Zones; Gulf of Alaska, Narrow Cape, Kodiak Island, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones in the Gulf of Alaska, in the proximity of Narrow Cape, Kodiak Island, Alaska. These zones are needed to protect persons and vessels operating in the vicinity of the safety zones during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island facility. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Commander, Seventeenth Coast Guard District, the Coast Guard Captain of the Port, Western Alaska, or their on-scene representative.

DATES: This temporary final rule is effective from 4 p.m. on February 12, 2005 through 11 p.m. on March 31, 2005. The safety zones will be enforced each day of the effective period from 4 p.m. through 11 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage, 510 ''L'' Street, Suite 100, Anchorage, AK 99501. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Meredith Gillman, Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Because the hazardous condition is expected to last for approximately six (6) hours of each day, and because general permission to enter the safety zones will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to protect human life and property from possible fallout from the rocket launch. The parameters of the zones will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each launch and will grant general permission to enter the safety zones during those times in which the launch does not pose a hazard to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The process of scheduling a rocket launch is uncertain due to unforeseen delays such as weather that can cause cancellation of the launch. The Coast Guard attempts to publish a final rule as close to the expected launch date as possible, however, these attempts often prove futile due to frequent re-scheduling. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect human life and property from possible fallout from the rocket launch. The parameters of the zones will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each launch and will grant general permission to enter the safety zones during those times in which the launch does not pose a hazard to mariners.

Background and Purpose

The Alaska Aerospace Development Corporation will launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island, Alaska between 5 p.m. and 11 p.m. during a seven-day period between February 12, 2005 and March 31, 2005. The safety zones are necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zones during those times in which a launch schedule does not pose a hazard to mariners. Because

the hazardous situation is expected to last for six (6) hours each day during the seven-day launch window period, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal.

Discussion of Rule

From the latest information received from the Alaska Aerospace Development Corporation, the launch window is scheduled for 5 p.m. to 11 p.m. during a seven-day period between February 12, 2005 and March 31, 2005. The sizes of the safety zones have been set based upon the trajectory information in order to provide a greater safety buffer in the event that the launch is aborted shortly after take-off. The Pacific Range Support Team has identified a launch area exclusion zone at Narrow Cape and southwest along the launch trajectory. The COTP will enforce two safety zones in support of their exclusion zone. The first established safety zone includes the waters of the Gulf of Alaska and adjacent coastal areas within the boundaries defined by a line drawn from a point located at 57°27.50′ N, 152°25.00′ W, then southeast to a point located at 57°22.75′ N, 152°15.00′ W, then southwest to a point located at 57°11.00′ N, 152°36.00′ W, and then northwest to a point located at 57°15.75′ N, 152°46.5′ W, and then northeast to the point located at 57°27.50′ N, 152°25.00′ W. The second established safety zone includes the waters adjacent to Narrow Cape within the boundaries defined by a circle centered at 57°26.1′ N, 152°20.49′ W, with a radius of 5 nautical miles. All coordinates reference Datum: NAD 1983.

These safety zones are necessary to protect spectators and transiting vessels from the potential hazards associated with the rocket launch. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zones during those times in which the launch does not pose a hazard to mariners.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. Because the hazardous situation is expected to last for approximately six (6) hours during the seven-day launch window period, and because general permission to enter the safety zones will be given during non-hazardous times, the impact of this rule on commercial traffic should be minor. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal economic impact on commercial traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have significant economic impacts on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit, anchor, or fish in a portion of the Gulf of Alaska off Narrow Cape from 4 p.m. to 11 p.m. each day from February 12, 2005 until March 31, 2005 when rocket launch operations are complete. Because the hazardous situation is expected to last for approximately six (6) hours of each day during the seven-day launch window period, and because general permission to enter the safety zones will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic should be minimal. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct affect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action''

under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it is a safety zone.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From February 12, 2005 to March 31, 2005, add temporary § 165.T17–012 to read as follows:

§ 165.T17–012 Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island, AK: Safety Zones.

(a) *Description.* These safety zones include an area in the Gulf of Alaska, in the proximity of Narrow Cape, Kodiak Island, Alaska. Specifically, these zones include the waters of the Gulf of Alaska that are within the area defined by a line drawn from a point located at 57°27.50′ N, 152°25.00′ W, then southeast to a point located at 57°22.75′ N, 152°15.00′ W, then southwest to a point located at 57°11.00′ N, 152°36.00′ W, and then northwest to a point located at 57°15.75′ N, 152°46.5′ W, and then northeast to the point located at 57°27.50′ N, 152°25.00′ W, and also within the area defined by a circle centered at 57°26.1′ N, 152°20.49′ W, with a radius of 5 nautical miles. All coordinates reference Datum: NAD 1983.

(b) *Enforcement periods.* The safety zones in this section will be enforced from 4 p.m. to 11 p.m. during each day of a six-day launch window period from February 12, 2005 to March 31, 2005.

(c) *Regulations.* (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zones.

(3) The general regulations governing safety zones contained in § 165.23 apply. No person or vessel may enter or remain in these safety zones, with the exception of attending vessels, without first obtaining permission from the Captain of the Port or his on-scene representative. The Captain of the Port, Western Alaska, or his on-scene representative may be contacted at the Kodiak Launch Complex via VHF marine channel 16.

Dated: January 21, 2005.

R.J. Morris,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 05–2867 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Western Alaska–05–001]

RIN 1625–AA00

Safety Zone; Gulf of Alaska, Sitkinak Island, Kodiak Island, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Gulf of Alaska, east of Sitkinak Island, Kodiak Island, Alaska. The zone is needed to protect persons and vessels operating in the vicinity of the safety zone during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island facility. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Commander, Seventeenth Coast Guard District, the Coast Guard Captain of the Port, Western Alaska, or their on-scene representative.

DATES: This temporary final rule is effective from 4 p.m on February 12, 2005 through 11 p.m. on March 31, 2005. The safety zones will be enforced each day of the effective period from 4 p.m. through 11 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage, 510 ''L'' Street, Suite 100, Anchorage, AK 99501. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Meredith Gillman, Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Because the hazardous condition is expected to last for approximately six (6) hours of each day, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to protect

human life and property from possible fallout from the rocket launch. The parameters of the zone will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The process of scheduling a rocket launch is uncertain due to unforeseen delays such as weather that can cause cancellation of the launch. The Coast Guard attempts to publish a final rule as close to the expected launch date as possible, however, these attempts often prove futile due to frequent re-scheduling. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect human life and property from possible fallout from the rocket launch. The parameters of the zone will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners.

Background and Purpose

The Alaska Aerospace Development Corporation will launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island, Alaska sometime between 5 p.m. and 11 p.m. during a seven-day period between February 12, 2005 and February 18, 2005. The safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which a launch schedule does not pose a hazard to mariners. Because the hazardous situation is expected to last for approximately six (6) hours each day during the seven-day launch window period, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal.

Discussion of Rule

From the latest information received from the Alaska Aerospace Development Corporation, the launch window is scheduled for six (6) hours during a six-day period between February 12 and February 18, 2005. The size of the safety zone has been set to protect the public from the reentry and impact of a rocket motor. The Pacific Range Support Team has identified a first stage exclusion zone at Sitkinak Island along the launch trajectory. The COTP will enforce a single safety zone in support of their exclusion zone. The established safety zone includes the waters of the Gulf of Alaska and adjacent coastal areas within the boundaries defined by a line drawn from a point located at 56°40.50′ N, 153°42.50′ W, then southeast to a point located at 56°34.00′ N, 153°29.50′ W, then southwest to a point located at 56°12.50′ N, 154°2.50′ W, and then northwest to a point located at 56°19.00′ N, 154°16.50′ W, and then northeast to the point located at 56°40.50′ N, 153°42.50′ W. All coordinates reference Datum: NAD 1983.

This safety zone is necessary to protect transiting vessels from the potential hazards associated with the Rocket launch. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. Because the hazardous situation is expected to last for approximately six (6) hours each day during the seven-day launch window period, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial traffic should be minimal. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal economic impact on commercial traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have significant economic impacts on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit, anchor, or fish in a portion of the Gulf of Alaska off Sitkinak Island from 4 p.m. to 11 p.m. each day from February 12 until March 31, 2005, or until rocket launch operations are complete. Because the hazardous situation is expected to last for approximately six (6) hours of each day during the seven-day launch window period, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic should be minimal. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal impact to small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct affect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it is a safety zone.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From February 12, 2005 to March 31, 2005, add temporary § 165.T17–011 to read as follows:

§ 165.T17–011 Alaska Aerospace Development Corporation, Sitkinak Island, Kodiak Island, AK: Safety Zones.

(a) *Description.* This safety zone includes an area in the Gulf of Alaska, west of Sitkinak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area bounded by a line drawn from a point located at 56°40.50′ N, 153°42.50′ W, then southeast to a point located at 56°34.00′ N, 153°29.50′ W, then southwest to a point located at 56°12.50′ N, 154°2.50′ W, and then northwest to a point located at 56°19.00′ N, 154°16.50′ W, and then northeast to the point located at 56°40.50′ N, 153°42.50′ W. All coordinates reference Datum: NAD 1983.

(b) *Enforcement periods.* The safety zone in this section will be enforced from 4 p.m. to 11 p.m. during each day of a seven-day launch window period from February 12, 2005 to March 31, 2005.

(c) *Regulations.* (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in § 165.23 apply. No person or vessel may enter or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port or his on-scene representative. The Captain of the Port, Western Alaska, or his on-scene representative may be contacted at the Kodiak Launch Complex via VHF marine channel 16.

Dated: January 21, 2005.

R.J. Morris,

Captain U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 05–2868 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–MI–0002; FRL–7873–4]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of adverse comments, the EPA is withdrawing the December 23, 2004 (69 FR 76848), direct

final rule approving limits that would limit emissions of Oxides of Nitrogen (NO_X) from large stationary sources (*i.e.* power plants, industrial boilers and cement kilns). The State of Michigan submitted this revision as a modification to the State Implementation Plan on April 3, 2003. After minor deficiencies in the April 3, 2003 submittal were identified, a subsequent submittal was made on May 27, 2004 to address these deficiencies. In the December 23, 2004 direct final approval, EPA found the changes made to the State's rules in the May 27, 2004 submittal approvable. In that direct final rule, EPA stated that if adverse comments were submitted by January 24, 2005, the rule would be withdrawn and not take effect. Comments were received during the public comment period. EPA believes these comments are adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comments in a subsequent final action based upon the proposed action also published on December 23, 2004 (69 FR 76886). EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 69 FR 76848 on December 23, 2004 is withdrawn as of February 15, 2005.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 353–6960. E-Mail Address: *aburano.douglas@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 4, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

■ Accordingly, the amendment to 40 CFR 52.1170 published in the **Federal Register** on December 23, 2004 (69 FR 76848) on pages 76848–76854 are withdrawn as of February 15, 2005.

[FR Doc. 05–2895 Filed 2–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[FRL–7873–1]

Adequacy of Minnesota Municipal Solid Waste Landfill Program

AGENCY: Environmental Protection Agency (EPA),

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is approving a modification to Minnesota's approved municipal solid waste landfill (MSWLF) permit program. The modification allows the State to issue research, development and demonstration (RD&D) permits to owners and operators of MSWLF units in accordance with its state law.

DATES: This final determination is effective February 15, 2005.

FOR FURTHER INFORMATION CONTACT: Donna Twickler, mailcode DW–8J, Waste Management Branch, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–6184, *twickler.donna@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria in 40 CFR part 258 to allow for research, development and demonstration (RD&D) permits. (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through state-issued RD&D permits. RD&D permits are only available in states with approved MSWLF permit programs which have been modified to incorporate RD&D permit authority. While States are not required to seek approval for this new provision, those States that are interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from EPA before issuing such permits. Approval procedures for new provisions of 40 CFR Part 258 are outlined in 40 CFR 239.12.

Minnesota's MSWLF permit program was approved on August 16, 1993 (58 FR 43350). On June 2, 2004, Minnesota applied for approval of its RD&D permit provisions. On September 10, 2004, EPA published both an immediate final rule (69 FR 54756) approving Minnesota's RD&D permit requirements, and a parallel proposed rule (69 FR 54756) proposing to approve Minnesota's RD&D permit requirements. Both notices provided a public comment period that ended on October 12, 2004. The immediate final rule would have become effective on Novermber 9, 2004, if no adverse comments were received. However, EPA received one adverse comment on the immediate final rule. Therefore, on November 3, 2004, EPA withdrew the immediate final rule (69 FR 65381, Nov. 12, 2004). Today's rule takes final action on the proposed approval of Minnesota's program modification for RD&D permit authority. After a thorough review, EPA Region 5 has determined that Minnesota's RD&D permit provisions as defined under Minnesota Rule 7035.0450 are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

B. Response to Comment

The commenter urged EPA not to approve Minnesota's or any state's application to modify its approved MSWLF permit program to add RD&D permit authority, because of a pending legal challenge to the EPA's rule amending 40 CFR part 258 to allow for RD&D variances (*GrassRoots Recycling Network* v. *EPA,* No. 04–1196 (D.C. Cir.)). EPA does not agree that the pending legal challenge prevents implementation of the RD&D rule. The existence of a petition for review does not, by itself, suspend implementation of the RD&D rule. The commenter also opposes modification of the state program in order to preserve state resources. It is the State's, not EPA's, decision to implement the RD&D rule during the pendency of the legal challenge, and Minnesota has decided to seek approval of its permit program modification even with the knowledge of the pending case.

In sum, the comment did not address either the substance or adequacy of Minnesota's RD&D permit requirements, or the basis of EPA's proposed decision to approve those requirements. EPA has concluded that the comment is not a basis for disapproving Minnesota's permit program modification.

C. Statutory and Executive Order Reviews

This action approves state solid waste requirements pursuant to RCRA Section 4005 and imposes no federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows: 1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this action from its review under Executive Order (EO) 12866; 2. Paperwork Reduction Act—This action does not impose an information collection burden under the Paperwork

Reduction Act; 3. Regulatory Flexibility Act—After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities; 4. Unfunded Mandates Reform Act—Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, this action does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act; 5. Executive Order 13132: Federalism—EO 13132 does not apply to this action because this action will not have federalism implications (*i.e.*, there are no substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities between federal and state governments); 6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this action because it will not have tribal implications (*i.e.*, there are no substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes). 7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks—This action is not subject to EO 13045 because it is not economically significant and is not based on health or safety risks; 8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This action is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866; 9. National Technology Transfer Advancement Act—This provision directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards. 10. Congressional Review Act—EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**.

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: January 26, 2005.

Norman Neidergang,

Acting Regional Administrator, U.S EPA, Region 5.

[FR Doc. 05–2891 Filed 2–14–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 501, 502, 515

[Docket No. 05–01]

Agency Reorganization and Delegations of Authority

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (''FMC'' or ''Commission'') amends its regulations relating to agency organization to reflect the reorganization of the agency that took effect August 23, 2004, and to delegate authority to certain FMC bureaus in order to improve the FMC's ability to carry out its statutory responsibilities over the ocean shipping industry in a more effective and efficient manner.

DATES: Effective February 15, 2005.

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5740, E-mail: *GeneralCounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION: The FMC is amending part 501 of Title 46, Code of Federal Regulations to reflect the reorganization of the agency that took effect on August 23, 2004. The FMC was reorganized in order to improve its ability to carry out its statutory responsibilities over the ocean shipping industry in a more effective and efficient manner.

Because the changes made in this proceeding address internal agency operating procedure and organization, and are routine and ministerial in nature within the meaning of the Administrative Procedure Act, 5 U.S.C. 553, this rule is published as final.

This Rule also makes nomenclature changes in certain CFR units to reflect a change in a relevant Commission bureau name since these CFR units were last revised.

List of Subjects

46 CFR Part 501

Organization and functions, Official seal, Authority delegations, Administrative practice and procedure.

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 515

Exports, Freight forwarders, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Federal Maritime Commission amends 46 CFR Parts 501, 502 and 515 as follows.

■ 1. Part 501 is revised to read as follows:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

SUBCHAPTER A—GENERAL AND ADMINISTRATIVE PROVISIONS

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

Subpart A—Organization and Functions

Subpart B—Official Seal

Subpart C—Delegation and Redelegation of Authorities

Authority: 5 U.S.C. 551–557, 701–706, 2903, and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89–56, 70 Stat. 195; 5 CFR Part 2638; Pub. L. 89–777, 80 Stat. 1356; Pub. L. 104–320, 110 Stat. 3870.

Subpart A—Organization and Functions

§ 501.1 Purpose.

This part describes the organization, functions and Official Seal of, and the delegation of authority within, the Federal Maritime Commission (''Commission'').

§ 501.2 General.

(a) Statutory functions. The Commission regulates common carriers by water and other persons involved in the oceanborne foreign commerce of the United States under provisions of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. sections 1701–1720); section 19 of the Merchant Marine Act, 1920 (46 U.S.C. app. section 876); the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. section 1710a); sections 2 and 3, Public Law 89–777, Financial Responsibility for Death or Injury to Passengers and for Non-Performance of Voyages (46 U.S.C. app. sections 817d and 817e); and other applicable statutes.

(b) Establishment and composition of the Commission. The Commission was established as an independent agency by Reorganization Plan No. 7 of 1961, effective August 12, 1961, and is composed of five Commissioners (''Commissioners'' or ''members''), appointed by the President, by and with the advice and consent of the Senate. Not more than three Commissioners may be appointed from the same political party. The President designates one of the Commissioners to serve as the Chairman of the Commission (''Chairman'').

(c) Terms and vacancies. The term of each member of the Commission is five years and begins when the term of the predecessor of that member ends (*i.e.,* on June 30 of each successive year), except that, when the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. A vacancy in the office of any Commissioner shall be filled in the same manner as the original appointment, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he or she succeeds. Each Commissioner shall be removable by the President for inefficiency, neglect of duty, or malfeasance in office.

(d) Quorum. A vacancy or vacancies in the Commission shall not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the members of the Commission is required to dispose of any matter before the Commission. For purposes of holding a formal meeting for the transaction of the business of the Commission, the actual presence of two Commissioners shall be sufficient. Proxy votes of absent members shall be permitted.

(e) Meetings; records; rules and regulations. The Commission shall, through its Secretary, keep a true record of all its meetings and the yea-and-nay votes taken therein on every action and order approved or disapproved by the Commission. In addition to or in aid of its functions, the Commission adopts rules and regulations in regard to its powers, duties and functions under the shipping statutes it administers.

§ 501.3 Organizational components of the Federal Maritime Commission.

The major organizational components of the Commission are set forth in the Organization Chart attached as Appendix A to this part. An outline table of the components/functions follows:

(a) Office of the Chairman of the Federal Maritime Commission. *(Chief Executive and Administrative Officer, FOIA and Privacy Act Appeals Officer.)*
(1) Information Security Officer.
(2) Designated Agency Ethics Official.
(b) Offices of the Members of the Federal Maritime Commission.
(c) Office of the Secretary. *(FOIA and Privacy Act Officer, Federal Register Liaison.)*
(1) Office of Consumer Affairs and Dispute Resolution Services.
(2) [Reserved]
(d) Office of the General Counsel. *(Ethics Official; Chair, Permanent Task Force on International Affairs; Legislative Counsel.)*
(e) Office of Administrative Law Judges.
(f) Office of Equal Employment Opportunity.
(g) Office of the Inspector General.
(h) Office of Operations.
(1) Bureau of Certification and Licensing.
(i) Office of Passenger Vessels & Information Processing.
(ii) Office of Ocean Transportation Intermediaries.
(2) Bureau of Trade Analysis.
(i) Office of Agreements.
(ii) Office of Economics & Competition Analysis.
(iii) Office of Service Contracts & Tariffs.
(3) Bureau of Enforcement.
(4) Area Representatives.
(i) Office of Administration. *(Chief Acquisition Officer, Audit Followup and Management Controls Official, Chief Information Officer, Chief Financial Officer.)*
(1) Office of Budget and Financial Management.
(2) Office of Human Resources.
(3) Office of Information Technology. *(Senior IT Officer, Forms Control Officer, Network Security Officer, Records Management Officer.)*
(4) Office of Management Services. *(Physical Security, FMC Contracting Officer.)*
(j) Boards and Committees.
(1) Executive Resources Board.
(2) Performance Review Board.

§ 501.4 Lines of responsibility.

(a) *Chairman.* The Office of the Secretary, the Office of the General Counsel, the Office of Administrative Law Judges, the Office of Equal Employment Opportunity, the Office of the Inspector General, the Office of Operations, the Office of Administration, and officials performing the functions of Information Security Officer and Designated Agency Ethics Official, report to the Chairman of the Commission.

(b) *Office of Operations.* The Bureau of Certification and Licensing, Bureau of Enforcement, Bureau of Trade Analysis, and Area Representatives report to the Office of Operations.

(c) *Office of Administration.* The Office of Budget and Financial Management, Office of Human Resources, Office of Information Technology, and Office of Management Services report to the Office of Administration. The Office of Equal Employment Opportunity and the Office of the Inspector General receive administrative assistance from the Director of Administration. All other units of the Commission receive administrative guidance from the Director of Administration.

(d) *Office of the Secretary.* The Office of Consumer Affairs and Dispute

Resolution Services reports to the Office of the Secretary.

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

As further provided in subpart C of this part, the functions, including the delegated authority of the Commission's organizational components and/or officials to exercise their functions and to take all actions necessary to direct and carry out their assigned duties and responsibilities under the lines of responsibility set forth in § 501.4, are briefly set forth as follows:

(a) *Chairman.* As the chief executive and administrative officer of the Commission, the Chairman presides at meetings of the Commission, administers the policies of the Commission to its responsible officials, and ensures the efficient discharge of their responsibilities. The Chairman provides management direction to the Offices of Equal Employment Opportunity, Inspector General, Secretary, General Counsel, Administrative Law Judges, Operations, and Administration with respect to all matters concerning overall Commission workflow, resource allocation (both staff and budgetary), work priorities and similar managerial matters; and establishes, as necessary, various committees and boards to address overall operations of the agency. The Chairman serves as appeals officer under the Freedom of Information Act, the Privacy Act, and the Federal Activities Inventory Reform Act of 1998. The Chairman appoints the heads of major administrative units after consultation with the other Commissioners. In addition, the Chairman, as ''head of the agency,'' has certain responsibilities under Federal laws and directives not specifically related to shipping. For example, the special offices or officers within the Commission, listed under paragraphs (a)(1) through (a)(4) of this section, are appointed or designated by the Chairman, are under his or her direct supervision and report directly to the Chairman:

(1) Under the direction and management of the Office Director, the *Office of Equal Employment Opportunity* (''EEO'') ensures that statutory and regulatory prohibitions against discrimination in employment and the requirements for related programs are fully implemented. As such, the Office administers and implements comprehensive programs on discrimination complaints processing, affirmative action and special emphasis. The Director, EEO, advises the Chairman regarding EEO's plans, procedures, regulations, reports and other matters pertaining to policy and the agency's programs. Additionally, the Director provides leadership and advice to managers and supervisors in carrying out their respective responsibilities in equal employment opportunity. The EEO Office administers and implements these program responsibilities in accordance with Equal Employment Opportunity Commission (''EEOC'') Regulations at 29 CFR Part 1614 and other relevant EEOC Directives and Bulletins.

(2) Under the direction and management of the Inspector General, the *Office of Inspector General* conducts, supervises and coordinates audits and investigations relating to the programs and operations of the Commission; reviews existing and proposed legislation and regulations pertaining to such programs and operations; provides leadership and coordination and recommends policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect waste, fraud and abuse in, such programs and operations; and advises the Chairman and the Congress fully and currently about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

(3) The *Information Security Officer* is a senior agency official designated under § 503.52 of this chapter to direct and administer the Commission's information security program, which includes an active oversight and security education program to ensure effective implementation of Executive Orders 12958 and 12968.

(4) The *Designated Agency Ethics Official* and *Alternate* are appropriate agency employees formally designated under 5 CFR 2638.202 and § 508.101 of this chapter to coordinate and manage the ethics program as set forth in 5 CFR 2638.203, which includes the functions of advising on matters of employee responsibilities and conduct, and serving as the Commission's designee(s) to the Office of Government Ethics on such matters. They provide counseling and guidance to employees on conflicts of interest and other ethical matters.

(b) *Commissioners.* The members of the Commission, including the Chairman, implement various shipping statutes and related directives by rendering decisions, issuing orders, and adopting and enforcing rules and regulations governing persons subject to the shipping statutes; and perform other duties and functions as may be appropriate under reorganization plans, statutes, executive orders, and regulations.

(c) *Secretary.* Under the direction and management of the Secretary, the Office of the Secretary:

(1) Is responsible for the preparation, maintenance and disposition of the official files and records documenting the business of the Commission. In this regard, the Office:

(i) Prepares and, as appropriate, publishes agenda of matters for action by the Commission; prepares and maintains the minutes with respect to such actions; signs, serves and issues, on behalf of the Commission, documents implementing such actions, and coordinates follow-up thereon.

(ii) Receives and processes formal and informal complaints involving alleged statutory violations, petitions for relief, special dockets applications, applications to correct clerical or administrative errors in service contracts, requests for conciliation service, staff recommendations for investigation and rulemaking proceedings, and motions and filings relating thereto.

(iii) Disseminates information regarding the proceedings, activities, functions, and responsibilities of the Commission to the maritime industry, news media, general public, and other government agencies. In this capacity the Office also:

(A) Administers the Commission's Freedom of Information Act, Privacy Act and Government in the Sunshine Act responsibilities; the Secretary serves as the Freedom of Information Act and Privacy Act Officer.

(B) Authenticates records of the Commission.

(C) Receives and responds to subpoenas directed to Commission personnel and/or records.

(D) Compiles and publishes the bound volumes of Commission decisions.

(E) Coordinates publication of documents, including rules and modifications thereto with the Office of the Federal Register; the Secretary serves as the Federal Register Liaison Officer and Certifying Officer.

(F) Oversees the content and organization of the Commission's Web site and authorizes the publication of documents thereon.

(2) Through the Secretary and, in the absence or preoccupation of the Secretary, through the Assistant Secretary, administers oaths pursuant to 5 U.S.C. § 2903(b).

(3) Manages the Commission's library and related services.

(4) Through the Office of Consumer Affairs and Dispute Resolution Services, has responsibility for developing and implementing the Alternative Dispute Resolution Program, responds to consumer inquiries and complaints, and coordinates the Commission's efforts to resolve disputes within the shipping industry. The Director of the Office of Consumer Affairs and Dispute Resolution Services is designated as the agency Dispute Resolution Specialist pursuant to section 3 of the Administrative Dispute Resolution Act of 1996, Public Law 104–320.

(d) *General Counsel.* Under the direction and management of the General Counsel, the Office of the General Counsel:

(1) Reviews for legal sufficiency all staff memoranda and recommendations that are presented for Commission action and staff actions acted upon pursuant to delegated authority under §§ 501.27(e) and 501.27(g).

(2) Provides written or oral legal opinions to the Commission, to the staff, and to the general public in appropriate cases.

(3) Prepares and/or reviews for legal sufficiency, before service, all final Commission decisions, orders, and regulations.

(4) Monitors, reviews and, as requested by the Committees of the Congress, the Office of Management and Budget, or the Chairman, prepares comments on all legislation introduced in the Congress affecting the Commission's programs or activities, and prepares draft legislation or amendments to legislation; coordinates such matters with the appropriate Bureau, Office or official and advises appropriate Commission officials of legislation that may impact the programs and activities of the Commission; prepares testimony for congressional hearings and responses to requests from congressional offices.

(5) Serves as the legal representative of the Commission in courts and in administrative proceedings before other government agencies.

(6) Monitors and reports on international maritime developments, including laws and practices of foreign governments which affect ocean shipping; and identifies potential state-controlled carriers within the meaning of section 3(8) of the Shipping Act of 1984, researches their status, and makes recommendations to the Commission concerning their classification.

(7) Represents the Commission in U.S. Government interagency groups dealing with international maritime issues; serves as a technical advisor on regulatory matters in bilateral and multilateral maritime discussions; and coordinates Commission activities through liaison with other government agencies and programs and international organizations.

(8) Screens, routes, and maintains custody of U.S. Government and international organization documents, subject to the classification and safekeeping controls administered by the Commission's Information Security Officer.

(9) Reviews for legal sufficiency all adverse personnel actions, procurement activities, Freedom of Information Act and Privacy Act matters and other administrative actions.

(10) Serves as the Chair of the Permanent Task Force on International Affairs or designates a person to serve as the Chair.

(e) *Administrative Law Judges.* Under the direction and management of the Chief Administrative Law Judge, the Office of Administrative Law Judges holds hearings and renders initial or recommended decisions in formal rulemaking and adjudicatory proceedings as provided in the Shipping Act of 1984, and other applicable laws and other matters assigned by the Commission, in accordance with the Administrative Procedure Act and the Commission's Rules of Practice and Procedure.

(f) *Office of Operations.* (1) The Director of Operations:

(i) As senior staff official, is responsible to the Chairman for the management and coordination of the Commission's Bureaus of Certification and Licensing; Trade Analysis; Enforcement; and the Commission's Area Representatives, as more fully described below, and thereby implements the regulatory policies of the Commission and directives of the Chairman;

(ii) The Office initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities.

(2) [Reserved]

(g) Under the direction and management of the Bureau Director, the *Bureau of Certification and Licensing:*

(1) Through the Office of Transportation Intermediaries, has responsibility for reviewing applications for Ocean Transportation Intermediary (''OTI'') licenses, and maintaining records about licensees.

(2) Through the Office of Passenger Vessels and Information Processing, has responsibility for reviewing applications for certificates of financial responsibility with respect to passenger vessels, managing all activities with respect to evidence of financial responsibility for OTIs and passenger vessel owner/operators, and for developing and maintaining all Bureau databases and records of OTI applicants and licensees.

(h) Under the direction and management of the Bureau Director, the *Bureau of Trade Analysis,* through its Office of Agreements; Office of Economics and Competition Analysis; and Office of Service Contracts and Tariffs, reviews agreements and monitors the concerted activities of common carriers by water, reviews and analyzes service contracts, monitors rates of government controlled carriers, reviews carrier published tariff systems under the accessibility and accuracy standards of the Shipping Act of 1984, responds to inquiries or issues that arise concerning service contracts or tariffs, and is responsible for competition oversight and market analysis.

(i) Under the direction and management of the Bureau Director, the *Bureau of Enforcement:*

(1) Participates as trial counsel in formal Commission proceedings when designated by Commission order, or when intervention is granted;

(2) Initiates, processes and negotiates the informal compromise of civil penalties under § 501.28 and § 502.604 of this chapter, and represents the Commission in proceedings and circumstances as designated;

(3) Acts as staff counsel to the Director of Operations and other bureaus and offices;

(4) Coordinates with other bureaus and offices to provide legal advice, attorney liaison, and prosecution, as warranted, in connection with enforcement matters;

(5) Conducts investigations leading to enforcement action, advises the Commission of evolving competitive practices in international oceanborne commerce, and assesses the practical repercussions of Commission regulations.

(j) *Area Representatives.* Maintain a presence in locations other than Washington, DC, with activities including the following:

(1) Representing the Commission within their respective geographic areas;

(2) Providing liaison between the Commission and the shipping industry and interested public; conveying pertinent information regarding regulatory activities and problems; and recommending courses of action and solutions to problems as they relate to the shipping public, the affected industry, and the Commission;

(3) Furnishing to interested persons information, advice, and access to Commission public documents;

(4) Receiving and resolving informal complaints, in coordination with the Director, Office of Consumer Affairs and Dispute Resolution Services;

(5) Investigating potential violations of the shipping statutes and the Commission's regulations;

(6) Conducting shipping industry surveillance programs to ensure compliance with the shipping statutes and the Commission's regulations. Such programs include common carrier audits, service contract audits and compliance checks of OTIs;

(7) Upon request of the Bureau of Certification and Licensing, auditing passenger vessel operators to determine the adequacy of performance bonds and the availability of funds to pay liability claims for death or injury, and assisting in the background surveys of OTI applicants;

(8) Conducting special surveys and studies, and recommending policies to strengthen enforcement of the shipping laws;

(9) Maintaining liaison with Federal and State agencies with respect to areas of mutual concern; and

(10) Providing assistance to the various bureaus and offices of the Commission, as appropriate and when requested.

(k) *Office of Administration.* (1) The Director of Administration:

(i) Provides administrative guidance to all units of the Commission, except the Offices of Equal Employment Opportunity and the Inspector General, which are provided administrative assistance;

(ii) Is the agency's Chief Acquisition Officer under the Services Acquisition Reform Act of 2003, Public Law 108–136, 117 Stat. 1663 and Commission Order No. 112;

(iii) Is the Audit Follow-up and Management (Internal) Controls Official for the Commission under Commission Orders 103 and 106;

(iv) Is the agency's Chief Financial Officer;

(v) Serves as the agency's lead executive for strategic planning, implementation and compliance with the Government Performance and Results Act of 1993, Public Law 103–62, 107 Stat. 285;

(2) The Deputy Director of Administration is the Commission's Chief Information Officer.

(3) The Office of Administration ensures the periodic review and updating of Commission orders. Under the direction and management of the Director of Administration, the Office of Administration is responsible for the management and coordination of the Offices of: Budget and Financial Management, Human Resources, Information Technology, and Management Services. The Office of Administration provides administrative support to the program operations of the Commission. The Director of Administration interprets governmental policies and programs and administers these in a manner consistent with Federal guidelines, including those involving financial management, human resources, information technology, and procurement. The Office initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its activities. The Director of Administration is responsible for directing and administering the Commission's training and development function. The Director of Administration also acts as the Commission's representative to the Small Agency Council. Other programs are carried out by its Offices, as follows:

(i) Office of Budget and Financial Management, under the direction and management of the Office Director, administers the Commission's financial management program, including fiscal accounting activities, fee and forfeiture collections, and payments, and ensures that Commission obligations and expenditures of appropriated funds are proper; develops annual budget justifications for submission to the Congress and the Office of Management and Budget; develops and administers internal controls systems that provide accountability for agency funds; administers the Commission's travel and cash management programs, ensures accountability for official passports; and assists in the development of proper levels of user fees.

(ii) The Office of Human Resources, under the direction and management of the Office Director, plans and administers a complete personnel management program including: Recruitment and placement; position classification and pay administration; occupational safety and health; employee counseling services; employee relations; workforce discipline; performance appraisal; incentive awards; retirement; and personnel security.

(iii) Office of Information Technology, under the direction and management of the Office Director, administers the Commission's information technology (''IT'') program under the Paperwork Reduction Act of 1995, as amended, as well as other applicable laws that prescribe responsibility for operating the IT program. The Office provides administrative support with respect to information technology to the program operations of the Commission. The Office interprets governmental policies and programs for information technology and administers these policies and programs in a manner consistent with federal guidelines. The Office initiates recommendations, collaborating with other elements of the Commission as warranted, for long range plans, new or revised policies and standards, and rules and regulations with respect to its program activities. The Office's functions include: conducting IT management studies and surveys; managing data telecommunications; developing and managing databases and applications; coordinating records management activities; administering IT contracts; and developing Paperwork Reduction Act clearances for submission to the Office of Management and Budget. The Office is also responsible for managing the computer security and the records and forms programs. The Director of the Office serves as Senior IT Officer, Forms Control Officer, Computer Security Officer, and Records Management Officer.

(iv) Office of Management Services, under the direction and management of the Office Director, directs and administers a variety of management support service functions of the Commission. The Director of the Office is the Commission's principal Contracting Officer under Commission Order No. 112. Programs include voice telecommunications; acquisition of all goods and services used by the Commission; building security and emergency preparedness; real and personal property management; printing and copying; mail services; graphic design; equipment maintenance; and transportation. The Office Director is the agency's liaison with the Small Agency Council's Procurement and Administrative Services Committees and with the General Services Administration (''GSA'') and the Department of Homeland Security (''DHS'') on building security Committee.

(l) *Boards and Committees.* The following boards and committees are established by separate Commission orders to address matters relating to the overall operations of the Commission:

(1) The *Executive Resources Board* (''ERB'') is composed of all Senior Executive Service members. The Chairman shall designate an ERB chair

on a rotational basis beginning October 1 of each year. The Board meets on an *ad hoc* basis to discuss, develop and submit recommendations to the Chairman on matters related to the merit staffing process for career appointments in the Senior Executive Service, including the executive qualifications of candidates for career appointment. The Board also plans and manages the Commission's executive development programs. Serving the Board in a non-voting advisory capacity are the Director, Office of Equal Employment Opportunity, the Training Officer, and the Director, Office of Human Resources, who also serves as the Board's secretary. [Commission Order No. 95.]

(2) The *Performance Review Board* (''PRB'') is chaired by a Commissioner designated by the Chairman, and is composed of a standing register of members which is published in the **Federal Register**. Once a year, the PRB Chairman appoints performance review panels from the membership to review individual performance appraisals and other relevant information pertaining to Senior Executives at the Commission, and to recommend final performance ratings to the Chairman. [Commission Order No. 115.] Every three years, the PRB considers supervisors' recommendations as to whether Senior Executives of the Commission should be recertified under the Ethics Reform Act of 1989, and makes appropriate recommendations to the Commission's Chairman. [Commission Order No. 118.]

Subpart B—Official Seal

§ 501.11 Official seal.

(a) *Description.* Pursuant to section 201(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. app. 1111(c)), the Commission prescribes its official seal, as adopted by the Commission on August 14, 1961, which shall be judicially noticed. The design of the official seal is described as follows:

(1) A shield argent paly of six gules, a chief azure charged with a fouled anchor or; shield and anchor outlined of the third; on a wreath argent and gules, an eagle displayed proper; all on a gold disc within a blue border, encircled by a gold rope outlined in blue, and bearing in white letters the inscription ''Federal Maritime Commission'' in upper portion and ''1961'' in lower portion.

(2) The shield and eagle above it are associated with the United States of America and denote the national scope of maritime affairs. The outer rope and fouled anchor are symbolic of seamen and waterborne transportation. The date ''1961'' has historical significance, indicating the year in which the Commission was created.

(b) *Design*

Subpart C—Delegation and Redelegation of Authorities

§ 501.21 Delegation of authorities.

(a) *Authority and delegation.* Section 105 of Reorganization Plan No. 7 of 1961, August 12, 1961, authorizes the Commission to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter. In subpart A of this part, the Commission has delegated general functions, and in this subpart C it is delegating miscellaneous, specific authorities set forth in §§ 501.23, *et seq.*, to the delegatees designated therein, subject to the limitations prescribed in subsequent subsections of this section.

(b) *Deputies.* Where bureau or office deputies are officially appointed, they are hereby delegated all necessary authority to act in the absence or incapacity of the director or chief.

(c) *Redelegation.* Subject to the limitations in this section, the delegatees may redelegate their authorities to subordinate personnel under their supervision and direction; but only if this subpart is amended to reflect such redelegation and notice thereof is published in the **Federal Register**. Under any redelegated authority, the redelegator assumes full responsibility for actions taken by subordinate redelegatees.

(d) *Exercise of authority; policy and procedure.* The delegatees and redelegatees shall exercise the authorities delegated or redelegated in a manner consistent with applicable laws and the established policies of the Commission, and shall consult with the General Counsel where appropriate.

(e) *Exercise of delegated authority by delegator.* Under any authority delegated or redelegated, the delegator (Commission), or the redelegator, respectively, shall retain full rights to exercise the authority in the first instance.

(f) *Review of delegatee's action.* The delegator (Commission) or redelegator of authority shall retain a discretionary right to review an action taken under delegated authority by a subordinate delegatee, either upon the filing of a written petition of a party to, or an intervenor in, such action; or upon the delegator's or redelegator's own initiative.

(1) Petitions for review of actions taken under delegated authority shall be filed within ten (10) calendar days of the action taken:

(i) If the action for which review is sought is taken by a delegatee, the petition shall be addressed to the Commission pursuant to § 502.69 of this chapter.

(ii) If the action for which review is sought is taken by a redelegatee, the petition shall be addressed to the redelegator whose decision can be further reviewed by the Commission under paragraph (f)(1)(i) of this section, unless the Commission decides to review the matter directly, such as, for example, in the incapacity of the redelegator.

(2) The vote of a majority of the Commission less one member thereof shall be sufficient to bring any delegated action before the Commission for review under this paragraph.

(g) *Action—when final.* Should the right to exercise discretionary review be declined or should no such review be sought under paragraph (f) of this section, then the action taken under delegated authority shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

(h) *Conflicts.* Where the procedures set forth in this section conflict with law or any regulation of this chapter, the conflict shall be resolved in favor of the law or other regulation.

§ 501.22 [Reserved]

§ 501.23 Delegation to the General Counsel.

The authority listed in this section is delegated to the General Counsel: authority to classify carriers within the meaning of section 3(8) of the Shipping Act of 1984, except where a carrier submits a rebuttal statement pursuant to § 565.3(b) of this chapter.

§ 501.24 Delegation to the Secretary.

The authorities listed in this section are delegated to the Secretary and, in the absence or preoccupation of the Secretary, to the Assistant Secretary.

(a) Authority to approve applications for permission to practice before the Commission and to issue admission certificates to approved applicants.

(b) Authority to extend the time to file exceptions or replies to exceptions, and the time for Commission review, relative to initial decisions of administrative law judges and decisions of Special Dockets Officers.

(c) Authority to extend the time to file appeals or replies to appeals, and the time for Commission review, relative to dismissals of proceedings, in whole or in part, issued by administrative law judges.

(d) Authority to establish and extend or reduce the time:

(1) To file documents either in docketed proceedings or relative to petitions filed under Part 502 of this chapter, which are pending before the Commission itself; and

(2) To issue initial and final decisions under § 502.61 of this chapter.

(e) Authority to prescribe a time limit for the submission of written comments with reference to agreements filed pursuant to section 5 of the Shipping Act of 1984.

(f) Authority, in appropriate cases, to publish in the **Federal Register** notices of intent to prepare an environmental assessment and notices of finding of no significant impact.

(g) Authority to prescribe a time limit less than ten days from date published in the **Federal Register** for filing comments on notices of intent to prepare an environmental assessment and notice of finding of no significant impact and authority to prepare environmental assessments of no significant impact.

(h) Authority, in the absence or preoccupation of the Director of Administration, to sign travel orders, nondocketed recommendations to the Commission, and other routine documents for the Director of Administration, consistent with the programs, policies, and precedents established by the Commission or the Director of Administration.

§ 501.25 Delegation to the Director, Office of Operations.

The authorities listed in this section are delegated to the Director of Operations.

(a) Authority to adjudicate, with the concurrence of the General Counsel, and authorize payment of, employee claims for not more than $1,000.00, arising under the Military and Civilian Personnel Property Act of 1964, 31 U.S.C. § 3721.

(b) Authority to approve administrative leave for Area Representatives.

§ 501.26 Delegation to and redelegation by the Director, Bureau of Certification and Licensing.

Except where specifically redelgated in this section, the authorities listed in this section are delegated to the Director, Bureau of Certification and Licensing.

(a) Authority to:

(1) Approve or disapprove applications for OTI licenses; issue or reissue or transfer such licenses; and approve extensions of time in which to furnish the name(s) and ocean transportation intermediary experience of the managing partner(s) or officer(s) who will replace the qualifying partner or officer upon whose qualifications the original licensing was approved;

(2) Issue a letter stating that the Commission intends to deny an OTI application, unless within 20 days applicant requests a hearing to show that denial of the application is unwarranted; deny applications where an applicant has received such a letter and has not requested a hearing within the notice period; and rescind, or grant extensions of, the time specified in such letters;

(3) Revoke the license of an OTI upon the request of the licensee;

(4) Upon receipt of notice of cancellation of any instrument evidencing financial responsibility, notify the licensee in writing that its license will automatically be suspended or revoked, effective on the cancellation date of such instrument, unless new or reinstated evidence of financial responsibility is submitted and approved prior to such date, and subsequently order such suspension or revocation for failure to maintain proof of financial responsibility;

(5) Revoke the ocean transportation intermediary license of a non-vessel-operating common carrier not in the United States for failure to designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process;

(6) Approve changes in an existing licensee's organization; and

(7) Return any application which on its face fails to meet the requirements of the Commission's regulations, accompanied by an explanation of the reasons for rejection.

(8) The authorities contained in paragraphs (a)(3) and (a)(4) of this section are redelegated to the Director, Office of Transportation Intermediaries, in the Bureau of Consumer Complaints and Licensing.

(b) Authority to:

(1) Approve applications for Certificates (Performance) and Certificates (Casualty) for passenger vessels, evidenced by a surety bond, guaranty or insurance policy, or combination thereof; and issue, reissue, or amend such Certificates;

(2) Issue a written notice to an applicant stating intent to deny an application for a Certificate (Performance) and/or (Casualty), indicating the reason therefor, and advising applicant of the time for requesting a hearing as provided for under § 540.26(c) of this chapter; deny any application where the applicant has not submitted a timely request for a hearing; and rescind such notices and grant extensions of the time within which a request for hearing may be filed;

(3) Issue a written notice to a certificant stating that the Commission intends to revoke, suspend, or modify a Certificate (Performance) and/or (Casualty), indicating the reason therefor, and advising of the time for requesting a hearing as provided for under § 540.26(c) of this chapter; revoke, suspend or modify a Certificate (Performance) and/or (Casualty) where the certificant has not submitted a timely request for hearing; and rescind such notices and grant extensions of time within which a request for hearing may be filed;

(4) Revoke a Certificate (Performance) and/or (Casualty) which has expired, and/or upon request of, or acquiescence by, the certificant; and

(5) Notify a certificant when a Certificate (Performance) and/or (Casualty) has become null and void in accordance with §§ 540.8(a) and 540.26(a) of this chapter.

(c) Authority to approve amendments to escrow agreements filed under § 540.5(b) of this Chapter when such amendments are for the purpose of changing names of principals, changing the vessels covered by the escrow agreement, changing the escrow agent, and changing the amount of funds held in escrow, provided that the changes in amount of funds result in an amount of coverage that complies with the requirements in the introductory text of § 540.5 of this Chapter.

§ 501.27 Delegation to and redelegation by the Director, Bureau of Trade Analysis.

Except where specifically redelegated in this section, the authorities listed in this section are delegated to the Director, Bureau of Trade Analysis.

(a) Authority to determine that no action should be taken to prevent an agreement or modification to an agreement from becoming effective under section 6(c)(1), and to shorten the review period under section 6(e), of the Shipping Act of 1984, when the

agreement or modification involves solely a restatement, clarification or change in an agreement which adds no new substantive authority beyond that already contained in an effective agreement. This category of agreement or modification includes, for example, the following: a restatement filed to conform an agreement to the format and organization requirements of Part 535 of this chapter; a clarification to reflect a change in the name of a country or port or a change in the name of a party to the agreement; a correction of typographical or grammatical errors in the text of an agreement; a change in the title of persons or committees designated in an agreement; or a transfer of functions from one person or committee to another.

(b) Authority to grant or deny applications filed under § 535.406 of this chapter for waiver of the form, organization and content requirements of §§ 535.401, 535.402, 535.403, 535.404 and 535.405 of this chapter.

(c) Authority to grant or deny applications filed under § 535.505 of this chapter for waiver of the information form requirements of §§ 535.503 and 535.504 of this chapter.

(d) Authority to grant or deny applications filed under § 535.709 of this chapter for waiver of the reporting and record retention requirements of §§ 535.701, 535.702, 535.703, 535.704, 535.705, 535.706, 535.707 and 535.708 of this chapter.

(e) Authority to determine that no action should be taken to prevent an agreement or modification of an agreement from becoming effective under section 6(c)(1) of the Shipping Act of 1984 for all unopposed agreements and modifications to agreements which will not result in a significant reduction in competition. Agreements which are deemed to have the potential to result in a significant reduction in competition and which, therefore, are not covered by this delegation include but are not limited to:

(1) New agreements authorizing the parties to collectively discuss or fix rates (including terminal rates).

(2) New agreements authorizing the parties to pool cargoes or revenues.

(3) New agreements authorizing the parties to establish a joint service or consortium.

(4) New equal access agreements.

(f) Authority to grant or deny shortened review pursuant to § 535.605 of this chapter for agreements for which authority is delegated in paragraph (e) of this section.

(g) Subject to review by the General Counsel, authority to deny, but not approve, requests filed pursuant to § 535.605 of this chapter for a shortened review period for agreements for which authority is not delegated under paragraph (e) of this section.

(h) Authority to issue notices of termination of agreements which are otherwise effective under the Shipping Act of 1984, after publication of notice of intent to terminate in the **Federal Register**, when such terminations are:

(1) Requested by the parties to the agreement;

(2) Deemed to have occurred when it is determined that the parties are no longer engaged in activity under the agreement and official inquiries and correspondence cannot be delivered to the parties; or

(3) Deemed to have occurred by notification of the withdrawal of the next to last party to an agreement without notification of the addition of another party prior to the effective date of the next to last party's withdrawal.

(i) Authority to determine whether agreements for the use or operation of terminal property or facilities, or the furnishing of terminal services, are within the purview of section 5 of the Shipping Act of 1984.

(j) Authority to request controlled carriers to file justifications for existing or proposed rates, charges, classifications, rules or regulations, and to review responses to such requests for the purpose of recommending to the Commission that a rate, charge, classification, rule or regulation be found unlawful and, therefore, requires Commission action under section 9(d) of the Shipping Act of 1984.

(k) Authority to recommend to the Commission the initiation of formal proceedings or other actions with respect to suspected violations of the shipping statutes and rules and regulations of the Commission.

(l)(1) Authority to approve for good cause or disapprove special permission applications submitted by common carriers, or conferences of such carriers, subject to the provisions of section 8 of the Shipping Act of 1984, for relief from statutory and/or Commission tariff requirements.

(2) The authority under this paragraph is redelegated to the Director, Office of Service Contracts and Tariffs, in the Bureau of Trade Analysis.

(m)(1) Authority to approve or disapprove special permission applications submitted by a controlled carrier subject to the provisions of section 9 of the Shipping Act of 1984 for relief from statutory and/or Commission tariff requirements.

(2) The authority under this paragraph is redelegated to the Director, Office of Service Contracts and Tariffs, in the Bureau of Trade Analysis.

(n) Authority contained in Part 530 of this chapter to approve, but not deny, requests for permission to correct clerical or administrative errors in the essential terms of filed service contracts.

§ 501.28 Delegation to the Director, Bureau of Enforcement.

The authorities listed in this section are delegated to the Director, Bureau of Enforcement.

(a) Authority to compromise civil penalty claims has been delegated to the Director, Bureau of Enforcement, by § 502.604(g) of this chapter. This delegation shall include the authority to compromise issues relating to the retention, suspension or revocation of ocean transportation intermediary licenses.

(b) [Reserved]

§ 501.29 Delegation to and redelegation by the Director, Office of Administration.

Except where specifically redelegated in this section, the authorities listed in this section are delegated to the Director of Administration.

(a) Authority to determine that an exigency of the public business is of such importance that annual leave may not be used by employees to avoid forfeiture before annual leave may be restored under 5 U.S.C. 6304.

(b)(1) Authority to approve, certify, or otherwise authorize those actions dealing with appropriations of funds made available to the Commission including allotments, fiscal matters, and contracts relating to the operation of the Commission within the laws, rules, and regulations set forth by the Federal Government.

(2) The authority under paragraph (b) of this section is redelegated to the Director, Office of Budget and Financial Management.

(c)(1) Authority to classify all positions GS–1 through GS–15 and wage grade positions.

(2) The authority under paragraph (c) of this section is redelegated to the Director, Office of Human Resources.

Subpart D—Public Requests for Information

§ 501.41 Public requests for information and decisions.

(a) *General.* Pursuant to 5 U.S.C. 552(a)(1)(A), there is hereby stated and published for the guidance of the public the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions, principally by contacting by telephone,

in writing, or in person, either the Secretary of the Commission at the Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, or the Area Representatives listed in paragraph (d) of this section. See also Part 503 of this chapter.

(b) The Secretary will provide information and decisions, and will accept and respond to requests, relating to the program activities of the Office of the Secretary and of the Commission generally. Unless otherwise provided in this chapter, any document, report, or other submission required to be filed with the Commission by statute or the Commission's rules and regulations relating to the functions of the Commission or of the Office of the Secretary shall be filed with or submitted to the Secretary.

(c) The Directors of the following bureaus and offices will provide information and decisions, and will accept and respond to requests, relating to the specific functions or program activities of their respective bureaus and offices as set forth in this chapter; but only if the dissemination of such information or decisions is not prohibited by statute or the Commission's Rules of Practice and Procedure:

(1) Office of the Secretary;

(i) Office of Consumer Affairs and Dispute Resolution Services;

(ii) [Reserved]

(2) Office of the General Counsel;

(3) Office of Administrative Law Judges;

(4) Office of Equal Employment Opportunity;

(5) Office of the Inspector General;

(6) Office of Operations;

(i) Bureau of Certification and Licensing;

(ii) Bureau of Trade Analysis;

(iii) Bureau of Enforcement;

(iv) Area Representatives will provide information and decisions to the public within their geographic areas, or will expedite the obtaining of information and decisions from headquarters. The addresses of these Area Representatives are as follows. Further information on Area Representatives, including Internet e-mail addresses, can be obtained on the Commission's home page at ''*http://www.fmc.gov.*''

Los Angeles

Los Angeles Area Representative, P.O. Box 230, 839 South Beacon Street, Room 320, San Pedro, CA 90733–0230.

South Florida

South Florida Area Representative, P.O. Box 813609, Hollywood, FL 33081–3609.

New Orleans

New Orleans Area Representative, U.S. Customs House, 423 Canal Street, Room 309B, New Orleans, LA 70130.

New York

New York Area Representative, Building No. 75, Room 205B, JFK International Airport, Jamaica, NY 11430.

Seattle

Seattle Area Representative, c/o U.S. Customs, 7 South Nevada Street, Suite 100, Seattle, WA 98134.

(7) Office of Administration;

(i) Office of Budget and Financial Management;

(ii) Office of Human Resources;

(iii) Office of Information Technology; and

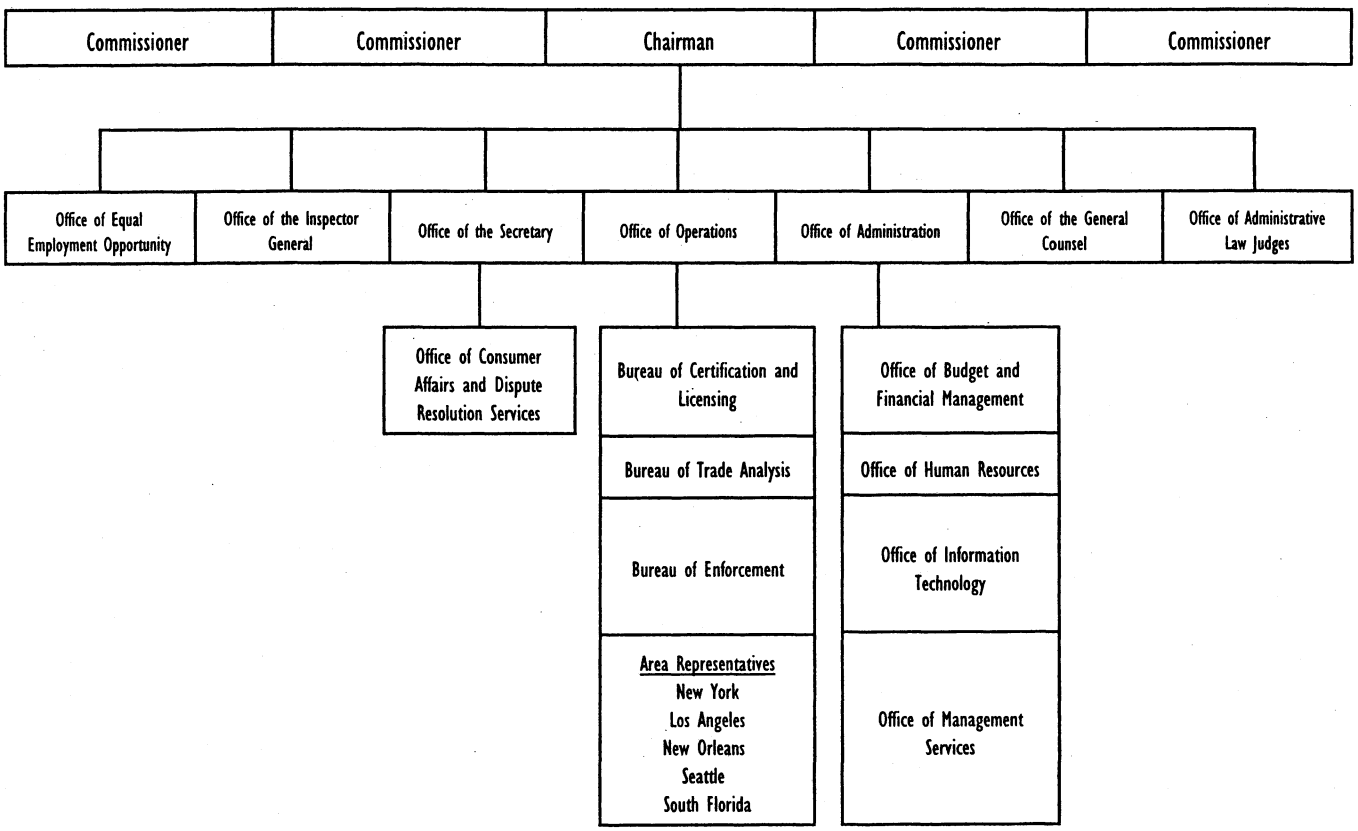
(iv) Office of Management Services.

(d) *Submissions to bureaus and offices.* Any document, report or other submission required to be filed with the Commission by statute or the Commission's rules and regulations relating to the specific functions of the bureaus and offices shall be filed with or submitted to the Director of such Bureau or Office.

BILLING CODE 6730–01–P

APPENDIX A TO PART 501

FEDERAL MARITIME COMMISSION ORGANIZATION CHART



BILLING CODE 6730–01–C

PART 502—RULES OF PRACTICE AND PROCEDURE

■ 2. The authority citation for Part 502 continues to read as follows:

Authority 5 U.S.C. 504, 551, 552, 556(c), 559, 561–569, 571–596; 5 U.S.C. 571–584; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817d, 817e, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1964–1965 Comp. P. 306; 21 U.S.C. 853a; Pub. L. 105–258, 112 Stat. 1902.

§ 502.271 [Amended]

■ 3. Amend § 502.271(f)(1), by removing the words ''Bureau of Consumer Complaints and Licensing'' and adding, in their place, the words ''Bureau of Certification and Licensing.''

§ 502.401 [Amended]

■ 4. Amend § 502.401, by removing the words ''Bureau of Consumer Complaints and Licensing'' and adding, in their place, the words ''Bureau of Certification and Licensing.''

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 5. The authority citation for Part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

■ 6. In 46 CFR Part 515 remove the words ''Bureau of Consumer Complaints and Licensing'' and add, in their place, the words ''Bureau of Certification and Licensing'' in the following places:

§ 515.5 [Amended]

a. Section 515.5(a);

§ 515.12 [Amended]

b. Section 515.12(a);

§ 515.18 [Amended]

c. Section 515.18(a);

§ 515.22 [Amended]

d. Section 515.22(e);

§ 515.25 [Amended]

e. Section 515.25(a);

§ 515.34 [Amended]

f. Section 515.34;

Appendix A to Subpart C [Amended]

g. Appendix A to Subpart C;

Appendix B to Subpart C [Amended]

h. Appendix B to Subpart C; and

Appendix D to Subpart C [Amended]

i. Appendix D to Subpart C.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 05–2918 Filed 2–14–05; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF TRANSPORTATION

49 CFR Part 1

[Docket No. OST–1999–6189]

RIN 1991–AA45

Organization and Delegation of Powers and Duties; Office of Intelligence, Security, and Emergency Response

AGENCY: Office of the Secretary of Transportation.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) renames the Office of Intelligence and Security as the Office of Intelligence, Security, and Emergency Response. The Secretary rescinds the currently delegated authority of the Administrator, Research and Special Programs Administration, to perform functions related to emergency preparedness and response vested in the Secretary and delegates the authority to the Director of Intelligence, Security, and Emergency Response in the Office of the Secretary.

DATES: *Effective Date:* February 4, 2005.

FOR FURTHER INFORMATION CONTACT: David K. Tochen, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law, Department of Transportation, 400 Seventh Street, SW., Room 10102, Washington, DC 20590; Telephone: (202) 366–9153.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Boards Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov.* You can also view and download this document by going to the Web page of the Department's Docket Management System (*http://dms.dot.gov*). On that Web page, click on ''search.'' On the next page, type in the four-digit docket number shown on the first page of this document. Then click on ''search.''

Background

Title 49 of the Code of Federal Regulations (CFR), § 1.53(e), delegates to the Administrator of the Research and Special Programs Administration (RSPA) the authority to carry out functions and activities related to emergency preparedness and response vested in the Secretary by 49 U.S.C. 101 and 301 or delegated to the Secretary by or through the Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*; Executive Order 12148, as amended; Executive Order 12656, as amended; Executive Order 12742, as amended; Executive Order 12919, as amended; Reorganization Plan No. 3 of 1978; and such other statutes, executive orders, and other directives as may pertain to emergency preparedness and response.

The functions related to emergency preparedness and response are currently performed by the RSPA's Office of Emergency Transportation (OET), subject to coordination with and concurrence by the Director of Intelligence and Security. The OET's mission is to serve as the Departmental emergency coordinator. OET also provides leadership for emergency preparedness and response activities; develops national preparedness and response policies and procedures in coordination with other Federal, state, local, and private sector authorities; operates the Department's Crisis Management Center (CMC); and participates on behalf of the United States in international emergency preparedness and response planning and related activities with the North Atlantic Treaty Organization (NATO) and other Allies.

The Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005, transfers operational responsibility for the OET and the CMC from RSPA to the Office of the Secretary. This authority is being delegated to the Office of Intelligence and Security, which is now being renamed to the Office of Intelligence, Security, and Emergency Response to reflect the inclusion of OET and the CMC. Therefore, this final rule rescinds the current delegation of Secretarial authority to the Administrator, RSPA, in 49 CFR 1.53(e) to carry out the functions and activities currently relating to emergency transportation performed by the OET and gives notice that these functions and activities shall be carried out by the Director of the Office of Intelligence, Security, and Emergency Response.

This rule is being published as a final rule and made effective upon signature by the Secretary. As the rule relates to Departmental management, procedures, and practices, notice and comment on it are unnecessary under 5 U.S.C. 553(b)(3)(A). In addition, the Secretary finds that there is good cause to make this rule effective upon publication pursuant to 5 U.S.C. 553(d)(2), as a change to internal policy.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation and funding requirements do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. I hereby certify this final rule, which amends the CFR to reflect a modification of authority from the Secretary, will not have a significant economic impact on a substantial number of small businesses.

E. Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

■ 1. The authority citation for Part 1 is revised to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597; Pub. L. 107–295, 116 Stat. 2064; Pub L. 107–296, 116 Stat. 2135; Pub. L. 108–447, div. H, 118 Stat. 3199.

■ 2. In § 1.23, revise paragraph (o) to read as follows:

§ 1.23 Spheres of primary responsibility.

* * * * *

(o) Office of Intelligence, Security and Emergency Response. Responsible for intelligence and security matters within the Department of Transportation that affect the safety of the traveling public, and for emergency preparedness and response functions and activities within the Department and operation of the Department's Crisis Management Center.

* * * * *

■ 3. In § 1.53, remove and reserve paragraph (e).

■ 4. Revise § 1.69 to read as follows:

§ 1.69 Delegations to the Director of Intelligence, Security, and Emergency Response.

The Director of Intelligence, Security, and Emergency Response is delegated authority for the following:

(a) *Intelligence and Security.* Carry out the functions assigned to the Secretary by the Aviation Security Improvement Act of 1990, section 101 (Pub. L. 101–508; November 16, 1990) relating to intelligence and security matters in all modes of transportation.

(b) *Emergency preparedness and response.* Carry out the functions related to emergency preparedness vested in the Secretary by 49 U.S.C. 101 and 301 or delegated to the Secretary by or through the Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*; Executive Order 10480, as amended; Executive Order 12148; Executive Order 12656; Executive Order 12742; Executive Order 12919, as amended; Reorganization Plan No. 3 or 1978; and such other statutes, executive orders, and other directives as may pertain to emergency preparedness.

Issued this 4th day of February 2005, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 05–2803 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. RSPA–2005–20104 (Notice No. 05–02)]

Regulatory Flexibility Act Section 610 and Plain Language Reviews

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: RSPA requests comments on the economic impact of its regulations on small entities. As required by the Regulatory Flexibility Act and as published in DOT's Semi-Annual Regulatory Agenda, we are analyzing the rules applicable to general shipment and packaging requirements for shippers to identify requirements that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand.

DATES: Comments must be received by May 16, 2005.

ADDRESSES: You may submit comments identified by the docket number RSPA–2005–20104 (Notice No. 05–02) by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number RSPA–2005–20104 (Notice No. 05–02) at the beginning of your comment. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–8553; or Donna O'Berry, Office of Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L.104–121), requires agencies to conduct periodic reviews of rules that have a significant economic impact on a substantial number of small business entities. The purpose of the review is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

B. Review Schedule

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on December 13, 2004 (69 FR 73492), listing in Appendix D (69 FR 73505) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The Research and Special Programs Administration (RSPA, we) has divided its Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process—an Analysis Year and Section 610 Review Year. For purposes of the review announced in this notice, the Analysis year began in December 2004, coincident with the fall 2004 publication of the Semiannual Regulatory Agenda, and will conclude in the fall of 2005.

During the Analysis Year, we will analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have a negative finding, we will provide a short explanation. For parts, subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review.

The following table shows the 10-year analysis and review schedule:

RSPA SECTION 610 REVIEW PLAN 1999–2009

Title	Regulation	Analysis year	Review year
Incident reports	§§ 171.15 and 171.16	1998	N/A
Hazmat safety procedures	Parts 106 and 107	1999	N/A
General Information, Regulations, and Definitions	Part 171.		
Carriage by Rail and Highway	Parts 174 and 177	2000	N/A
Carriage by Vessel	Part 176	2001	N/A
Radioactive Materials	Parts 172, 173, 174, 175, 176, 177, 178.	2002	N/A
Explosives	Parts 172, 173, 174, 176, 177	2003	N/A
Cylinders	Parts 172, 173, 174, 176, 177, 178, 180.		
Shippers—General Requirements for Shipments and Packagings	Part 173	2004	2005
Specifications for Non-bulk Packagings	Part 178	2005	2006
Training and planning grants	Part 110.		
Specifications for Bulk Packagings	Parts 178, 179, 180	2006	2007
Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements.	Part 172	2007	2008
Carriage by Aircraft	Part 175.		

C. Regulations Under Analysis

During Year 6 (2004–2005), the Analysis Year, we will conduct a preliminary assessment of the rules in 49 CFR Part 173 applicable to general shipment and packaging requirements for shippers. The review will include the following subparts:

PART 173

Subpart	Title
Subpart A	General.
Subpart B	Preparation of Hazardous Materials for Transportation.
Subpart D	Definitions, Classification, Packing Group Assignments and Exceptions for Hazardous Materials Other Than Class 1 and Class 7.
Subpart E	Non-bulk Packaging for Hazardous Materials Other Than Class 1 and Class 7.
Subpart F	Bulk Packaging for Hazardous Materials Other Than Class 1 and Class 7.
Subpart G	Gases; Preparation and Packaging.
Subpart I	Class 7 (Radioactive) Materials.

We are seeking comments on whether any requirements for shippers in Part 173 have a significant impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if any of the transportation requirements applicable to shippers in Part 173 has a significant economic impact on your business or organization, please submit a comment explaining how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

II. Plain Language

A. Background and Purpose

Plain language helps readers find requirements quickly and understand them easily. Examples of plain language techniques include:

(1) Undesignated center headings to cluster related sections within subparts.

(2) Short words, sentences, paragraphs, and sections to speed up reading and enhance understanding.

(3) Sections as questions and answers to provide focus.

(4) Personal pronouns to reduce passive voice and draw readers into the writing.

(5) Tables to display complex information in a simple, easy-to-read format.

For an example of a rule drafted in plain language, you can refer to RSPA's final rule entitled ''Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures,'' which was published June 25, 2002 (67 FR 42948). This final rule revised and clarified the hazardous materials safety rulemaking and program procedures by rewriting 49 CFR Part 106 and Subpart A of Part 107 in plain language and creating a new part 105 that contains definitions and general procedures.

B. Review Schedule

In conjunction with our section 610 reviews, we will be performing plain language reviews of the HMR over a 10-year period on a schedule consistent with the section 610 review schedule. Thus, our review of requirements in Part 173 applicable to general shipment and packaging requirements for shippers will also include a plain language review to determine if the regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as putting information in tables or consolidating regulatory requirements, that may make the regulations easier to use.

Issued in Washington, DC on February 9, 2005 under authority delegated in 49 CFR Part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 05–2873 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 70, No. 30
Tuesday, February 15, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM/STD–01–375]

RIN 1904–AB09

Energy Conservation Program for Commercial and Industrial Equipment: Energy Conservation Standards for Commercial Unitary Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Advance notice of proposed rulemaking; availability of the ''Joint Stakeholders Comments'' and opportunity for comment.

SUMMARY: DOE announces the availability of the ''Joint Stakeholders Comments on Standards for Commercial Package Air Conditioners and Heat Pumps'' (hereafter ''Joint Stakeholders Comments'') and an opportunity for public comment. DOE received the Joint Stakeholders Comments from a group of nineteen stakeholders in response to DOE's advance notice of proposed rulemaking (ANOPR) concerning standards for commercial unitary air conditioners and heat pumps. This notice informs the public of the recommended minimum energy efficiency standards presented in the Joint Stakeholders Comments. To help DOE determine the appropriate next step in this rulemaking, DOE invites interested members of the public who did not join in the Joint Stakeholders Comments to submit any comments they may have on the Joint Stakeholders Comments, including the recommendation for expediting the proceedings by adopting these recommended efficiency standards through a direct final rule.

DATES: DOE will accept written comments, data, and information regarding the Joint Stakeholders Comments until, but no later than 4 p.m., April 1, 2005.

ADDRESSES: A document entitled ''Joint Stakeholders Comments on Standards for Commercial Package Air Conditioners and Heat Pumps, Docket EE–RM/STD–01–375'' is available for review on the Internet at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/cuac_anopr.html* or from Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, EE–2J, Room 1J–018, 1000 Independence Ave., SW., Washington, DC 20585, or by telephone (202) 586–2945.

You may submit comments, identified by EE–RM/STD–01–375 or RIN Number 1904–AB09, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *commercialairconditioner.anopr@ee.doe.gov* with ''Joint Stakeholders Comments on Standards for Commercial Air Conditioners and Heat Pumps'' in the subject line.
- Mail: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, EE–2J, Room 1J–018, 1000 Independence Ave., SW., Washington, DC 20585.
- Fax: (202) 586–4617.

FOR FURTHER INFORMATION CONTACT: James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–8654. E-mail: *jim.raba@ee.doe.gov* or Francine Pinto, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–9507. E-mail: *francine.pinto@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On July 29, 2004, DOE published in the **Federal Register** an ANOPR to solicit public comments on its preliminary analyses concerning possible energy efficiency standards for certain commercial unitary air conditioners and heat pumps with rated cooling capacities of 65,000 British thermal units per hour (Btu/h) and greater, but less than 240,000 Btu/h. This rulemaking was initiated under the authority of the Energy Policy and Conservation Act (42 U.S.C. 6311 *et seq.*) (EPCA). In response to the ANOPR, a group of nineteen stakeholders submitted to DOE a set of joint comments. That group of stakeholders (hereafter ''Joint Stakeholders'') includes: the Air-Conditioning and Refrigeration Institute; the American Council for an Energy-Efficient Economy; Aaon, Inc.; The Alliance to Save Energy; the Appliance Standards Awareness Project; Armstrong Air Conditioning Inc.; the California Energy Commission; Carrier Corporation; Daikin Industries, Ltd.; Lennox International Inc.; Mammoth, Inc.; McQuay International; the Natural Resources Defense Council; Nordyne Inc.; Northeast Energy Efficiency Partnerships; Rheem Manufacturing Company; Sanyo Fisher (USA) Corp.; Trane/American Standard Inc.; and York International Corp.

The Joint Stakeholders Comments recommend the adoption of certain energy efficiency standards that the Joint Stakeholders assert meet the applicable statutory requirements. Specifically, the Joint Stakeholders recommend minimum energy efficiency ratios (EERs) and coefficients of performance (COPs) for certain commercial package air conditioners and heat pumps, respectively, as follows:

Air-cooled products	Efficiency standards
≥65,000 — < 135,000 Btu/h	11.2/11.0 EER for Air Conditioners. 11.0/10.8 EER for Heat Pumps. 3.3 COP @47°F for Heat Pumps.
≥135,000 — < 240,000 Btu/h	11.0/10.8 EER for Air Conditioners. 10.6/10.4 EER for Heat Pumps.

Air-cooled products	Efficiency standards
	3.2 COP @47°F for Heat Pumps.

The Joint Stakeholders Comments further ask DOE to adopt January 1, 2010, as the effective date for compliance with the recommended minimum efficiency standards. The Comments state that this date was chosen to coincide with a change in the refrigerant used in these systems mandated by the Clean Air Act, as amended. (42 U.S.C. 7401 *et seq.*) The Joint Stakeholders urge DOE to issue a notice of proposed rulemaking (NOPR) or a direct final rule that would adopt the Joint Stakeholders' recommended minimum efficiency standards. The Joint Stakeholders Comments are available for review on the Internet at *http://www.eere.energy.gov/buildings/appliance_standards/commercial/cuac_anopr.html*, or from Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, EE–2J, Room 1J–018, 1000 Independence Ave., SW., Washington, DC 20585, or by telephone (202) 586–2945.

1. The Efficiency Standards

Because of the diversity of interests represented by the Joint Stakeholders, the minimum efficiency standards they have recommended may be acceptable to stakeholders who were not parties to the Joint Stakeholders Comments. DOE is interested in other stakeholders' reactions to the recommended minimum efficiency standards and whether stakeholders who did not sign the joint comments believe the recommended standards are appropriate and could or should be adopted.

2. Rulemaking Procedure

The Joint Stakeholders urge DOE to adopt the recommended standards by issuing either a standard Notice of Proposed Rulemaking (NOPR) or a direct final rule.

If DOE were to proceed with the NOPR process, it would issue a standard NOPR and accept comments from interested members of the public. After considering the comments and possibly conducting further analyses, DOE would publish a notice of final rulemaking with a preamble that responded to major issues that emerge from the comments. This procedure would be the more time consuming of the two alternatives suggested by the Joint Stakeholders because, based on DOE's experience, it believes the two notices would require long preparation times; moreover, the two notices would be published separately with a wide interval between publication dates.

The direct final rulemaking procedure would involve simultaneous publication of both a direct final rule, and a NOPR that incorporates by reference the text of the direct final rule. The preamble of the direct final rule would include a statement that the agency would publish a timely notice of withdrawal in the **Federal Register** before the effective date established for purposes of modifying the Code of Federal Regulations and proceed with the NOPR if it receives significant adverse public comments. If significant adverse comments are not received, the direct final rule would become effective without any other action by the agency. This procedure is appropriate only for rules for which significant adverse comment is considered unlikely.

DOE is interested in stakeholder comments on these alternative procedures and whether the public would benefit by implementing minimum energy efficiency standards for commercial package air conditioners and heat pumps in an expedited manner. If public comments in response to today's notice of availability indicate that there is no significant opposition to DOE promulgating a direct final rule establishing the standards recommended by the Joint Stakeholders Comments, DOE would strongly consider doing so if DOE concluded that such standards meet EPCA requirements.

All persons interested in submitting comments on the Joint Stakeholders Comments must submit their comments to DOE by the date specified in the **DATES** section of this notice; after that date, no further submissions will be entertained. Comments must be submitted to one of the addresses listed in the **ADDRESSES** section of this notice. DOE will consider all comments received by the specified deadline.

Issued in Washington, DC, on February 9, 2005.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 05–2875 Filed 2–14–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20353; Directorate Identifier 2004–NM–255–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD would require installing additional shielding of the hydraulic lines in the wing box area. This proposed AD is prompted by the determination that the additional hydraulic line shields will protect the lines from possible impact by tire debris if the tire tread fails. We are proposing this AD to prevent damage to the hydraulic lines and subsequent leakage from the two hydraulic systems, which could result in loss of braking capability on the affected side of the airplane, asymmetrical braking, and reduced directional control—particularly during a rejected takeoff.

DATES: We must receive comments on this proposed AD by March 17, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20353; the directorate identifier for this docket is 2004–NM–255–AD.

FOR FURTHER INFORMATION CONTACT: Daniel Parillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20353; Directorate Identifier 2004–NM–255–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that additional shielding of the hydraulic lines in the wing box area is necessary to protect the lines from possible impact by tire debris if the tire tread fails. If both lines have enough damage to cause leakage from the two hydraulic systems, braking capability on the affected side of the airplane would be lost, resulting in asymmetrical braking and reduced directional control—particularly during a rejected takeoff.

Relevant Service Information

The manufacturer has issued Bombardier Service Bulletin 601R–57–021, Revision ''C,'' dated February 23, 2004. The service bulletin describes procedures for installing additional hydraulic line shields to cover exposed hydraulic lines on both sides of the wing box area. The procedures also include replacing the left and right inboard brake lines with new lines to eliminate fouling of the lines with the shield. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2004–20, dated October 5, 2004, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Shield installation	16	$65	$0	$1,040	91	$94,640

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism

implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly Canadair):
Docket No. FAA–2005–20353; Directorate Identifier 2004–NM–255–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by March 17, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 7067 inclusive, 7069 through 7165 inclusive, 7167 through 7169 inclusive, and 7171 through 7188 inclusive.

Unsafe Condition

(d) This AD was prompted by the determination that additional shielding of the hydraulic lines in the wing box area will protect the lines from possible impact by tire debris if the tire tread fails. We are proposing this AD to prevent damage to the hydraulic lines and subsequent leakage from the two hydraulic systems, which could result in loss of braking capability on the affected side of the airplane, asymmetrical braking, and reduced directional control—particularly during a rejected takeoff.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation of Hydraulic Line Shields

(f) Within 24 months after the effective date of this AD, install additional shielding of the hydraulic lines in the wing box area, by doing all the actions specified in the Accomplishment Instructions of Bombardier Service Bulletin 601R–57–021, Revision 'C,' dated February 23, 2004.

(g) We also consider the requirements of paragraph (f) of this AD to be met if the installation is done before the effective date of this AD in accordance with Bombardier Service Bulletin 601R–57–021, Revision 'B,' dated July 18, 2001.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) Canadian airworthiness directive CF–2004–20, dated October 5, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on February 6, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2841 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20352; Directorate Identifier 2004–NM–214–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes and Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757–200 and –300 series airplanes and Model 767 series airplanes. This proposed AD would require replacing the existing operational software of the Pegasus flight management computer (FMC) system with new, improved operational software. This proposed AD is prompted by reports of ''old'' or expired air traffic control (ATC) clearance messages being displayed on the control display unit (CDU) of the FMC system during subsequent flights. We are proposing this AD to prevent display of ''old'' or expired clearance messages on the CDU of subsequent flights, which could result in the airplane entering unauthorized airspace or following a flight path that does not provide minimum separation requirements between aircraft, and a consequent near miss or a mid-air collision.

DATES: We must receive comments on this proposed AD by April 1, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20352; the directorate identifier for this docket is 2004–NM–214–AD.

FOR FURTHER INFORMATION CONTACT: Samuel Slentz, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6483; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20352; Directorate Identifier 2004–NM–214–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received several reports indicating that, on a Boeing Model 767–400ER airplane, air traffic control (ATC) clearance messages that had been uplinked to the flight management computer (FMC) during a previous flight were displayed on the control display unit (CDU) for the subsequent flight that used the ATC datalink function. The ''old'' or expired clearance messages had not been cleared on completion of the previous flight. This condition, if not corrected, could cause ''old'' or expired clearance messages on subsequent flights to be displayed on the CDU, which could result in the airplane entering unauthorized airspace or following a flight path that does not provide minimum separation requirements between aircraft, and a consequent near miss or a mid-air collision.

Similar Airplane Models

The FMC on certain Boeing Model 757 series airplanes are identical to those on the affected Model 767 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed the alert service bulletins for the airplane models listed in the following table.

RELEVANT SERVICE INFORMATION

Boeing airplane model	Boeing alert service bulletin	Dated (2004)
757–200 series airplanes	757–34A0258	February 12.
757–300 series airplanes	757–34A0259	February 12.
767–200, –300, and –300F series airplanes	767–34A0389, Revision 2	December 16.
767–400ER series airplanes	767–34A0390	February 19.

These alert service bulletins describe procedures for replacing the existing operational program software (OPS) and flight information and data output (FIDO) software of the FMC with Pegasus 2003 OPS and FIDO software. Installing the Pegasus 2003 OPS and FIDO software will ensure that the uplinked messages are cleared upon completion of a flight. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 857 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 547 airplanes of U.S. registry. The proposed actions would take about 3 work hours per airplane, at an average labor rate of $65 per work hour. The manufacturer would provide required parts to the operators at no cost. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $106,665, or $195 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–20352; Directorate Identifier 2004–NM–214–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by April 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200 and –300 series airplanes and Model 767–200, –300, –300F, and –400ER series airplanes; certificated in any category; equipped with a Pegasus flight management computer (FMC) system.

Unsafe Condition

(d) This AD was prompted by reports of ''old'' or expired air traffic control (ATC) clearance messages being displayed on the control display unit (CDU) of the FMC system during subsequent flights. We are issuing this AD to prevent the airplane entering unauthorized airspace or following a flight path that does not provide minimum separation requirements between aircraft, and a consequent near miss or mid-air collision.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replacing the Operational Program Software (OPS) and Flight Information and Data Output (FIDO) Software

(f) Within 18 months after the effective date of this AD, replace the OPS and FIDO software of the existing FMC with Pegasus 2003 OPS and FIDO software, in accordance with the applicable service bulletin specified in Table 1 of this AD.

TABLE 1.—APPLICABLE SERVICE BULLETIN

Boeing airplane model	Boeing alert service bulletin	Dated (2004)
757–200 series airplanes	757–34A0258	February 12.
757–300 series airplanes	757–34A0259	February 12.
767–200, –300, and –300F series airplanes	767–34A0389, Revision 2	December 16.
767–400ER series airplanes	767–34A0390	February 19.

Acceptable for Compliance

(g) Accomplishment of Boeing Alert Service Bulletin 767–34A0389, dated February 19, 2004; or Revision 1, dated September 16, 2004, before the effective date of this AD, is an acceptable method of compliance with the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on February 6, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2840 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20351; Directorate Identifier 2003–NM–269–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 767 series airplanes. This proposed AD would require an inspection of each main tank fuel boost pump for the presence of a pump shaft flame arrestor, and if the flame arrestor is missing, replacement of that pump with a pump having a pump shaft flame arrestor. This proposed AD would also require repetitive measurements of the flame arrestor's position in the pump, and corrective actions if necessary. This proposed AD is prompted by reports that certain fuel boost pumps may not have flame arrestors installed in the pump shaft. We have also received reports that the pin that holds the flame arrestor in place can break due to metal fatigue. We are proposing this AD to prevent the possible migration of a flame from a main tank fuel boost pump inlet to the vapor space of that fuel tank, and consequent ignition of fuel vapors, which could result in a fire or explosion should the pump inlets become uncovered.

DATES: We must receive comments on this proposed AD by April 1, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20351; the directorate identifier for this docket is 2003–NM–269–AD.

FOR FURTHER INFORMATION CONTACT: Bernie Gonzalez, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6498; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20351; Directorate Identifier 2003–NM–269–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received reports that certain fuel boost pumps for the main fuel tanks do not have pump shaft flame arrestors installed. While the affected fuel boost pumps were installed on certain Boeing Model 767 series airplanes, the pumps may have been transferred to other airplanes during operator maintenance. Therefore, all Boeing Model 767 airplanes may be affected.

We have also received reports that the roll pin that holds the flame arrestor in the proper position in the fuel boost pump shaft can break due to metal fatigue. If the pin breaks, the pin and the flame arrestor can drop down the pump shaft into the reprime/vapor removal portion of the pump. The ingestion of the metal pieces created by the broken pin may produce a sparking condition and consequent ignition of vapor if present. The pump shaft flame arrestor is part of the explosion-proof enclosure of the fuel pump. This flame arrestor's function is to contain an internal pump explosion and prevent any flame from reaching the fuel tank via the pump inlet. If the flame arrestor is missing or loose, the pump is no longer explosion proof. In this condition, if the pump inlet is uncovered such that the pump runs dry, the fuel tank has no protection from flame egress due to an ignition within the pump. Such conditions may exist during ground defueling of the airplane fuel tanks and during abnormal operating conditions involving a low quantity of fuel in the tank. During low fuel operation one or more fuel pumps may experience intermittent dry operation for sufficient periods of time to permit vapor ignition within the pump. This condition, if not corrected, could result in the migration of a flame from a main tank fuel boost pump inlet to the vapor space of that fuel tank, and consequent ignition of fuel vapors, which could result in a fire or explosion.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletins 767–28A0077 (for Model 767–200, –300, and –300F series airplanes) and 767–28A0081 (for Model 767–400ER series airplanes), both Revision 1, both dated July 8, 2004, which describe procedures for inspecting each main tank fuel boost pump to determine if the pin and flame arrestor are installed, repetitively measuring the position of the flame arrestor in the pump, and corrective actions. The corrective actions include installing serviceable boost pumps. The Boeing alert service bulletins reference Hamilton Sundstrand Service Bulletin 5006003–28–2, dated October 25, 2002, as an additional source of service information for doing the inspections and corrective actions. The procedures in the Hamilton Sundstrand service bulletin include:

- Removing the pumping unit assemblies from the main fuel tank boost pumps.
- Measuring the distance from the impeller end of the shaft to the flame arrestor (finned plug) in the pumping unit assemblies.
- Testing certain pumping unit assemblies.
- Marking the identification plates of each pumping unit assembly with the symbol ''28–2.''
- Reinstalling the pumping unit assemblies into the fuel boost pumps.

If the measurement is greater than the limit specified in the Hamilton Standard service bulletin, that service bulletin specifies to return the affected pumping unit assembly to a repair shop for replacement of the pin and flame arrestor.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require a detailed inspection of each main tank fuel boost pump to determine if a flame arrestor is installed, repetitive measurements of the position of the flame arrestor in the pump, and corrective actions if necessary. The proposed AD would require you to use the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Information.''

Difference Between the Proposed AD and Service Information

Operators should note that, although the Hamilton Sundstrand service bulletin specifies to return main tank fuel boost pumps with damaged, broken, or out-of-position flame arrestors to a repair shop, that action is not required by this proposed AD.

Clarification of Inspection Terminology

Boeing Alert Service Bulletins 767–28A0077 and 767–28A0081, both Revision 1, specify to do an inspection of each main tank fuel boost pump for the presence or integrity of the flame arrestor as specified in Hamilton Sundstrand Service Bulletin 5006003–28–2, dated October 25, 2002. This proposed AD requires a detailed inspection of each main tank fuel boost pump for the presence of the flame arrestor. Note 2 has been included in this proposed AD to define this type of inspection.

The inspection of the integrity of the flame arrestor is referred to as a ''check'' in the Hamilton Sundstrand service bulletin. Instead of referring to this action as a check, this proposed AD uses the term ''measurement.''

Interim Action

We consider this proposed AD interim action. If final action is later identified, we may consider further rulemaking then.

Costs of Compliance

This proposed AD would affect about 915 airplanes worldwide, and 400 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection of flame arrestor presence/position, per inspection cycle.	5	$65	None	$325, per inspection cycle	400	$130,000

Authority for this Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–20351; Directorate Identifier 2003–NM–269–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by April 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 767 series airplanes, certificated in any category.

Unsafe Condition

(d) This proposed AD is prompted by reports that certain fuel boost pumps may not have flame arrestors installed in the pump shaft. We have also received reports that the pin that holds the flame arrestor in place can break due to metal fatigue. We are issuing this AD to prevent the possible migration of a flame from a main tank fuel boost pump inlet to the vapor space of that fuel tank, and consequent ignition of fuel vapors, which could result in a fire or explosion should the pump inlets become uncovered.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin References

(f) The term ''alert service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletins 767–28A0077 (for Model 767–200, –300, and –300F series airplanes) and 767–28A0081 (for Model 767–400ER series airplanes), both Revision 1, both dated July 8, 2004; as applicable.

Note 1: The Boeing alert service bulletins reference Hamilton Sundstrand Service Bulletin 5006003–28–2, dated October 25, 2002, as an additional source of service information for accomplishment of the inspection and corrective actions. Although the Hamilton Sundstrand service bulletin specifies to return main tank fuel boost pumps with damaged, broken, or out-of-position flame arrestors to a repair shop, that action is not required by this AD.

Inspection for Presence/Position of Flame Arrestor in Main Tank Fuel Boost Pumps

(g) Prior to the accumulation of 15,000 total flight hours, or within 365 days after the effective date of this AD, whichever is later: Do a detailed inspection of each main tank fuel boost pump to determine if the pump shaft flame arrestor is installed, a

measurement of the flame arrestor's position in the pump, and any applicable corrective actions, by accomplishing all of the actions in the applicable alert service bulletin. Repeat the measurement of the flame arrestor's position in the pump thereafter at intervals not to exceed 6,000 flight hours or 24 months, whichever is first. Any applicable corrective actions must be done before further flight.

Note 2: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Note 3: There is no terminating action available at this time for the repetitive inspections required by paragraph (g) of this AD.

Parts Installation

(h) As of the effective date of this AD, no main tank fuel boost pump may be installed on any airplane unless it has been inspected, and any applicable corrective action performed, in accordance with the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on February 6, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2839 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20350; Directorate Identifier 2004–NM–202–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 777–200 and –300 series airplanes. This proposed AD would require inspecting the valve control and indication wire bundles of the fuel system of the wing rear spar for discrepancies, and corrective action if necessary. This proposed AD is prompted by reports of six incidents of the wire bundles chafing against the rear spar stiffeners outside the fuel tank. We are proposing this AD to prevent this chafing, which could result in wire damage leading to a short circuit, subsequent ignition of flammable vapors, and possible uncontrollable fire during fueling or flight.

DATES: We must receive comments on this proposed AD by April 1, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20350; the directorate identifier for this docket is 2004–NM–202–AD.

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6482; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20350; Directorate Identifier 2004–NM–202–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in

the AD docket shortly after the DMS receives them.

Discussion

We have received reports indicating six incidents of the valve control and indication wire bundles of the fuel system chafing against the rear spar stiffeners outside the fuel tank on Boeing Model 777 series airplanes. Since this wire bundle is located in a high-vibration area, chafing can lead to potential wire damage, and a short circuit could occur. These conditions, if not corrected, could result in wire damage leading to a short circuit, subsequent ignition of flammable vapors, and possible uncontrollable fire during fueling or flight.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 777–28–0033, dated August 14, 2003. The service bulletin describes procedures for inspecting the valve control and indication wire bundles of the fuel system of the wing rear spar for discrepancies (chafing damage and incorrect routing), and corrective action if necessary. The corrective action involves repairing any damage and modifying the wire bundle routing, as applicable. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Bulletin.''

Difference Between the Proposed AD and Service Bulletin

The proposed AD identifies the correct part number (P/N) for a certain clamp for which an incorrect P/N was specified in the service bulletin. P/N BACC10GU105P, shown in the part list table of Kit 005W3225 and in the step tables in Figures 3 and 4 of the Accomplishment Instructions of the service bulletin, is not a valid P/N; the correct P/N is BACC10JU105P. The manufacturer is aware of this discrepancy, concurs with the change, and has issued Information Notice (IN) 777–28–0033 IN 01, dated January 29, 2004, to inform operators of the error. We have included this information in paragraph (f) of this proposed AD.

Clarification of Inspection Terminology

In this proposed AD, the ''inspection'' of the wire bundles, as specified in the service bulletin is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Costs of Compliance

There are about 403 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 129 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $8,385, or $65 per airplane.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this proposed AD.

Regulatory Findings

We have determined that this proposed AD will not have federalism implications under Executive Order 13132. This proposed AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–20350; Directorate Identifier 2004–NM–202—AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by April 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 and –300 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 777–28–0033, dated August 14, 2003.

Unsafe Condition

(d) This AD was prompted by reports of six incidents of the valve control and indication wire bundles of the fuel system chafing against the rear spar stiffeners outside the fuel tank. We are issuing this AD to prevent this chafing, which could result in wire damage leading to a short circuit, subsequent ignition of flammable vapors, and possible uncontrollable fire during fueling or flight.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Detailed Inspection/Corrective Action

(f) Within 18 months after the effective date of this AD: Do a detailed inspection of the valve control and indication wire bundles of the fuel system of the wing rear spar for discrepancies (including any applicable corrective action), by doing all the actions specified in the Accomplishment Instructions of Boeing Special Attention

Service Bulletin 777–28–0033, dated August 14, 2003. Any applicable corrective action must be done before further flight. Part number (P/N) BACC10GU105P, shown in the part list table of Kit 005W3225 and in the step tables in Figures 3 and 4 of the Accomplishment Instructions of the service bulletin, is not a valid P/N; the correct P/N that must be used is P/N BACC10JU105P.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on February 6, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2838 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20349; Directorate Identifier 2003–NM–108–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes; Model DC–10–10 and DC–10–10F Airplanes; Model DC–10–15 Airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) Airplanes; Model DC–10–40 and DC–10–40F Airplanes; and Model MD–10–10F and MD–10–30F Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model MD–11 and –11F airplanes. The existing AD currently requires a one-time inspection to detect loose preload-indicating (PLI) washers or cracked or corroded nuts of the lower bolts of the inboard flap outboard hinge, and replacement with new parts if necessary. This proposed AD would require replacement with new, improved parts of the inboard flap, outboard hinge, forward attach bracket, and lower attach bolt assemblies. This proposed AD also would add certain other McDonnell Douglas transport category airplanes and require an inspection for certain parts, and related investigative and corrective actions if necessary. This proposed AD is prompted by a report indicating that the left-hand inboard flap outboard hinge pulled away from the wing structure. We are proposing this AD to prevent loose PLI washers or cracked or corroded nuts of the lower bolts of the inboard flap outboard hinge, which could result in separation of the inboard flap outboard hinge from the wing structure and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by April 1, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ronald Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2005–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2005–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20349; Directorate Identifier 2003–NM–108–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can *visit http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management

Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On July 10, 2002, we issued AD 2002–14–03, amendment 39–12803 (67 FR 47254, July 18, 2002), for certain McDonnell Douglas Model MD–11 and MD–11F airplanes. That AD requires a one-time inspection to detect loose preload-indicating (PLI) washers or cracked or corroded nuts of the lower bolts of the inboard flap outboard hinge, and replacement with new parts if necessary. That AD was prompted by a report indicating that the left-hand inboard flap outboard hinge pulled away from the wing structure where it attaches with two upper and two lower bolts. We issued that AD to detect and correct loose PLI washers or cracked or corroded nuts of the lower bolts of the inboard flap outboard hinge, which could result in separation of the inboard flap outboard hinge from the wing structure and consequent reduced controllability of the airplane.

Actions Since Existing AD Was Issued

Since the existing AD was issued, we have determined that the upper and lower attach bolt assemblies specified on Model MD–11 and MD–11F airplanes affected by AD 2002–14–03 are identical to the attach bolt assemblies on certain Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes. Therefore, all these models may be subject to the same unsafe condition.

Additionally, in the preamble to AD 2002–14–03, we indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered. We now have determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin (ASB) MD11–57A067, Revision 01, including Appendices A and B, dated April 8, 2003 (for Model MD–11 and –11F airplanes). The ASB describes various procedures for different groups of airplanes, based on the composition of the nuts on the lower bolts of the inboard flap outboard hinge. (Boeing ASB MD11–57A067, including Appendices A and B, dated July 10, 2002, is the appropriate source of service information for AD 2002–14–03.)

Group 1 airplanes specified in Revision 01 have alloy steel nuts, and Group 2 airplanes specified in Revision 01 have Inconel nuts. The procedures for these airplane groups include removing sealant from the head and nut sides of both bolt assemblies, using a wiggle tool to detect looseness of the preload-indicating (PLI) washers, and visually inspecting the nut for corrosion and cracking. Based on the results of the inspection, related investigative and corrective actions include doing a magnetic particle inspection of the bolt to detect cracking and corrosion, replacing discrepant parts with new Inconel and/or alloy steel bolts and nuts and new PLI washers, and applying sealant.

We also have reviewed Boeing Service Bulletin MD–1157A068, Revision 1, dated April 8, 2003 (for Model MD–11 and MD–11F airplanes). That service bulletin describes procedures for replacing the bolts and nuts of the inboard flap, outboard hinge, forward attach bracket, and the lower attach bolt assemblies with Inconel bolts and nuts.

Additionally, we reviewed Boeing Service Bulletin DC10–57A149, Revision 1, dated April 8, 2003 (for Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes). That service bulletin describes procedures for inspecting the maintenance records to determine if new Inconel bolts and nuts have been installed in accordance with Boeing Service Bulletin DC10–57–116. For certain airplanes, the service bulletin describes encapsulating both nut sides of the bolt assemblies with sealant, and inspecting for cracking of the nuts of the upper and lower attach bolt assemblies. The service bulletin also describes procedures for replacing the PLI washers with new washers, and for replacing both upper and lower attach bolt assemblies with Inconel nuts and bolts.

Accomplishment of the actions specified in the above service bulletins is intended to adequately address the identified unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would supersede AD 2002–14–03. For certain airplanes, this proposed AD would continue to require the one-time inspection to detect loose PLI washers or cracked or corroded nuts of the lower bolts of the inboard flap outboard hinge, and replacement with new parts if necessary. This proposed AD would also require eventual replacement of the steel bolts and nuts with Inconel material. This proposed AD would require you to use the applicable service information described previously to perform these actions except as discussed under ''Differences Between the Proposed AD and the Relevant Service Information.''

Differences Between the Proposed AD and the Relevant Service Information

Boeing Alert Service Bulletin MD11–57A067, Revision 01, dated April 8, 2003, specifies that operators may test for looseness of the PLI washers by use of a wiggle tool, ''or equivalent.'' However, this proposed AD would require that any alternative to the wiggle-tool test be accomplished in accordance with a method approved by the FAA. Use of an equivalent tool or test procedure is allowed only if approved as an alternative method of compliance in accordance with the requirements of paragraph (e) of this proposed AD.

Although Boeing Service Bulletin DC10–57A149, Revision 1, dated April 8, 2003, specifies inspection of the maintenance records to determine if new Inconel bolts and nuts have been installed in accordance with Boeing Service Bulletin DC10–57–116, this proposed AD specifies inspection of the maintenance records to determine if new Inconel bolts and nuts have been installed in accordance with Boeing Service Bulletin DC10–57–116, Revision 01, dated November 25, 1993; Revision 02, dated December 22, 1998; or Revision 03, dated May 12, 1999.

Further, although Boeing Alert Service Bulletin MD11–57A067 specifies that the manufacturer may be contacted for disposition of ''additional examination recommendations,'' this proposed AD would require the actions to be accomplished in accordance with a method approved by the FAA.

Although Boeing Service Bulletin DC10–57A149 specifies sending a report

and discrepant parts to the manufacturer, this proposed AD would not require those actions.

Change to Existing AD

This proposed AD would retain certain requirements of AD 2002–14–03. Since AD 2002–14–03 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2002–14–03	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).
Paragraph (c)	Paragraph (h).

Costs of Compliance

There are about 593 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is considered to be $65 per hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection of Model MD–11 and -11F airplanes (required by AD 2002–14–03).	10 to 12		$650 to $780	66	Between $42,900 and $51,480.
Replacing parts for Model MD–11 and -11F airplanes (new proposed action).	13	$2,041	$2,886	66	$190,476.
Inspection of Model DC–10–10, and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; Model MD–10–10F and MD–10–30F airplanes.	1	0	$65	297	$19,305.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–12803 (67 FR 47254, July 18, 2002) and adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2005–20349; Directorate Identifier 2003–NM–108–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by April 1, 2005.

Affected ADs

(b) This AD supersedes AD 2002–14–03, amendment 39–12803.

Applicability

(c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

McDonnell Douglas Model	As listed in Boeing
(1) DC–10–10, and DC–10–10F airplanes; DC–10–15 airplanes; DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; DC–10–40 and DC–10–40F airplanes; MD–10–10F and MD–10–30F airplanes.	Service Bulletin DC10–57A149, Revision 1, dated April 8, 2003.
(2) MD–11 and MD–11F airplanes	Alert Service Bulletin MD11–57A067, including Appendix A and B; Revision 01, dated April 8, 2003; and Service Bulletin MD11–57A068, Revision 1, dated April 8, 2003.

Unsafe Condition

(d) This AD is prompted by a report indicating that the left-hand inboard flap outboard hinge pulled away from the wing structure. We are issuing this AD to prevent loose preload-indicating (PLI) washers or cracked or corroded nuts of the lower bolts of the inboard flap outboard hinge, which could result in separation of the inboard flap outboard hinge from the wing structure and consequent reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Certain Requirements of AD 2002–14–03:

Inspection

(f) For airplanes listed in Boeing Alert Service Bulletin MD11–57A067, dated July 10, 2002: At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD, do a detailed inspection (including removing sealant from the head and nut sides of both bolt assemblies) of the nuts and PLI washers of the lower bolts of the inboard flap outboard hinge to detect discrepancies (including loose PLI washers or cracked or corroded nuts, as applicable), in accordance with Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002, except as required by paragraphs (g) and (h) of this AD. Before further flight thereafter, do applicable related investigative and corrective actions (including performing a magnetic particle inspection of the bolt to detect cracking and corrosion, replacing discrepant parts with new Inconel and/or alloy steel bolts and nuts and new PLI washers, and applying sealant, as applicable); and, within 600 flight cycles, replace discrepant bolts, nuts, and washers with new parts, as applicable; in accordance with the alert service bulletin.

(1) For Group 1 airplanes: Inspect within 30 days after August 2, 2002 (the effective date of AD 2002–14–03, amendment 39–12803).

(2) For Group 2 airplanes: Inspect within 60 days after August 2, 2002.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Exceptions to Paragraph (f) Requirements

(g) Where Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002, specifies that testing for looseness of the PLI washers may be accomplished by the use of a wiggle tool, ''or equivalent'': Either the wiggle tool must be used, or the test must be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

(h) Where Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002, specifies to contact Boeing for ''additional examination recommendations'': Before further flight, these actions, if accomplished, must be performed in accordance with a method approved by the Manager, Los Angeles ACO. For such a method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

New Requirements of This AD:

Replacement of Steel Bolts and Nuts

(i) For Model MD–11 and ''MD–11F airplanes specified in Condition 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–57A068, dated Revision 1, dated April 8, 2003: Within 18 months after the effective date of this AD, replace the bolts and nuts of the inboard flap, outboard hinge, forward attach bracket, and lower attach bolt assemblies with bolts and nuts made from Inconel material; and install new PLI washers, by accomplishing all the actions in the Accomplishment Instructions of Boeing Service Bulletin MD11–57068, dated January 7, 2003, or Revision 1, dated April 8, 2003.

(j) For Model MD–11 and MD–11F airplanes specified in Condition 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–57A068, Revision 1, dated April 8, 2003: Within 36 months after the effective date of this AD, replace the bolts and nuts of the inboard flap, outboard hinge, forward attach bracket, and lower attach bolt assemblies with bolts and nuts made from Inconel material and install new PLI washers, in accordance with Boeing Service Bulletin MD11–57068, dated January 7, 2003 or Revision 1, dated April 8, 2003.

(k) For Model MD–11 and MD–11F airplanes specified in Condition 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–57A068, Revision 1, dated April 8, 2003: Within 60 months after the effective date of this AD, replace the bolts and nuts of the inboard flap, outboard hinge, forward attach bracket, and lower attach bolt assemblies with bolts and nuts made from Inconel material and new PLI washers, in accordance with Boeing Service Bulletin MD11–57068, dated January 7, 2003, or Revision 1, dated April 8, 2003.

Note 2: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Inspection of Certain Parts or Maintenance Records

(l) For Model DC–10–10, and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes: Within 6 months after the effective date of this AD, perform a general visual inspection of the inboard flap, outboard hinge, forward attach bracket, and upper and lower attach bolt assemblies to determine if those parts have been replaced with Inconel bolt assemblies in accordance with Boeing Service Bulletin DC10–57–116, Revision 01, dated November 25, 1993; Revision 02, dated December 22, 1998; or Revision 03, dated May 12, 1999. Instead of performing a general visual inspection of those parts, a review of airplane maintenance records is acceptable if replacement of the Inconnel bolt assemblies in accordance with Boeing Service Bulletin DC10–57–116, Revision 01, dated November 25, 1993; Revision 02, dated December 22, 1998; or Revision 03, dated May 12, 1999, can be positively determined from that review.

(1) If it can positively be determined that the Inconcel bolt assemblies are installed, no further action is required by this paragraph.

(2) If the Inconel bolt assemblies are not installed, before further flight, do a detailed inspection for cracking of the external area of each nut of the inboard flap, outboard hinge, forward attach bracket, lower attach bolt assembly, in accordance with Boeing Service Bulletin DC10–57A149, Revision 1, dated April 8, 2003.

(i) If no cracking is detected, before further flight, encapsulate both nut sides of the bolt assembly installations with sealant; and,

within 24 months after the effective date of this AD, replace both upper and lower attach bolt assemblies with bolts and nuts made from Inconel; in accordance with the service bulletin.

(ii) If any cracking is detected, do the actions specified in either paragraph (l)(2)(ii)(A) or (l)(2)(ii)(B) of this AD, at the times specified, in accordance with the service bulletin.

(A) Prior to further flight, replace both upper and lower attach bolt assemblies with bolts and nuts made from Inconel and new washers;

(B) Prior to further flight, replace both lower attach bolt assemblies with bolts and nuts made from Inconel and new washers, and within 24 months after the effective date of this AD, replace both upper attach bolt assemblies with bolts and nuts made from Inconel and new washers.

No Reporting Requirement

(m) Although certain service information referenced in this AD specifies to submit a report and discrepant parts to the manufacturer, this AD does not include those requirements.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Issued in Renton, Washington, on February 3, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2837 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20347; Directorate Identifier 2004–NM–226–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, –500, –600, –700, –700C, –800 and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes. This proposed AD would require installing an updated version of the operational program software (OPS) in the flight management computers (FMCs), and doing other specified actions. This proposed AD would also require reinstalling software, if necessary. This proposed AD is prompted by one operator reporting FMC map shifts on several Model 737–400 series airplanes with dual FMCs, using OPS version U10.4A. We are proposing this AD to prevent the FMC from displaying the incorrect actual navigation performance value to the flightcrew, which could prevent adequate alerting of a potential navigation error. This condition could result in a near miss with other airplanes or terrain, or collision if other warning systems also fail.

DATES: We must receive comments on this proposed AD by April 1, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20347; the directorate identifier for this docket is 2004–NM–226–AD.

FOR FURTHER INFORMATION CONTACT: Sam Slentz, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6483; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20347; Directorate Identifier 2004–NM–226–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received from one operator a report of flight management computer (FMC) map shifts on several Boeing Model 737–400 series airplanes with dual FMCs, using operational program software (OPS) version U10.4A. In one of these incidents, the flightcrew did not know they were 5 miles off-course until the air traffic controller contacted them. During all incidents, the VERIFY POSITION message was correctly shown on the control display unit (CDU), but the actual navigation performance

(ANP) value did not agree with the observed FMC position error. Also, the required navigation performance (RNP) message, UNABLE REQD NAV PERF, was not displayed since the ANP value was less than the RNP value. Although the flightcrew is alerted to the position differences, they do not know that the ANP value is incorrect. Testing conducted by the airplane manufacturer has shown that under some conditions, the FMC OPS, version U10.5, does not give reliable ANP data. An incorrect ANP value displayed on the CDU of the FMC to the flightcrew, if not corrected, could prevent adequate alerting of a potential navigation error that could result in a near miss with other airplanes or terrain or collision if other warning systems also fail.

The FMC OPS, with versions U10.3, U10.4, U10.4A, and U10.5, on certain Model 737–300, –500, –600, –700, –700C, –800 and –900 series airplanes are identical to those on the affected Model 737–400 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–34A1801, dated July 15, 2004; and Boeing Alert Service Bulletin 737–34A1821, dated July 15, 2004. The service bulletins describe procedures for installing updated version U10.5A of the OPS, part number (P/N) 549849–014, in the left and right FMCs, and doing other specified actions. The other specified actions include the following:

- For Model 737–600, –700, –700C, –800, and –900 series airplanes: Installing the compatible, model/engine database (MEDB) software, P/N BCG–00N–H6, in the left and right FMCs;
- For all airplanes: Installing the current version of the navigational database (NDB) software in the left and right FMCs;
- For all airplanes: Installing the software options database (OPC) in the left and right FMCs, using the OPC software that was originally installed before installation of the updated version of the OPS;
- For Model 737–600, –700, –700C, –800, and –900 series airplanes: Doing configuration checks of the left and right FMCs to ensure that the following software is correctly installed: The updated version of the OPS, compatible version of the MEDB software, and OPC software;
- For Model 737–300, –400, and –500 series airplanes: Doing a configuration check of the left and right FMCs to ensure that the updated version of the OPS and OPC software is correctly installed; and
- For all airplanes: Replacing the existing OPS disk set in the airplane's software media binder with new OPS disk set, P/N 10–62225–1013. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.''

Difference Between the Proposed AD and the Service Information

The service information does not specify what action to take if the incorrect software version (of the OPS, model/engine database if applicable, or software options database) is found installed on any FMC during any configuration check. However, this proposed AD would require reinstallation of the applicable software, if necessary.

Clarification of Proposed Requirements

The service bulletins provide procedures for doing configuration checks of the left and right FMCs to ensure that the updated version of the OPS, the compatible version of the MEDB software, and the OPC software are installed. We have determined that certificated maintenance personnel must perform these configuration checks.

Costs of Compliance

There are about 3,482 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 1,312 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Boeing model	Work hours	Average labor rate per hour	Parts	Cost per airplane
737–300, –400, and –500 series airplanes	1	$65	$15	$80
737–600, –700, –700C, –800, and –900 series airplanes	2	65	15	145

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this proposed AD.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES**

section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–20347; Directorate Identifier 2004–NM–226–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by April 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

Boeing models	As listed in
737–300, -400, and –500 series airplanes	Boeing Alert Service Bulletin 737–34A1821, dated July 15, 2004.
737–600, –700, –700C, –800 and –900 series airplanes	Boeing Alert Service Bulletin 737–34A1801, dated July 15, 2004.

Unsafe Condition

(d) This AD was prompted by one operator reporting flight management computer (FMC) map shifts on several Model 737–400 series airplanes with dual FMCs, using operational program software (OPS) version U10.4A. We are issuing this AD to prevent the FMC from displaying the incorrect actual navigation performance value to the flightcrew, which could prevent adequate alerting of a potential navigation error. This condition could result in a near miss with other airplanes or terrain, or collision if other warning systems also fail.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Install Updated Version of OPS

(f) Within 180 days after the effective date of this AD, install the updated version of the OPS in the left and right FMCs; and, before further flight, do all the other specified actions. Do the installation and other specified actions by accomplishing all of the actions in the Accomplishment Instructions of the applicable service bulletin, as listed in Table 1 of this AD. Where the service bulletin specifies a configuration check, certificated maintenance personnel must perform the configuration check.

Reinstall Software, If Necessary

(g) If the incorrect software version of the OPS, model/engine database if applicable, or software options database is found installed on any FMC during any configuration check required by paragraph (f) of this AD: Before further flight, reinstall the software, as applicable. Do the reinstallation of any software in accordance with the Accomplishment Instructions of the applicable service bulletin, as listed in Table 1 of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on February 2, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2827 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20345; Directorate Identifier 2004–NM–101–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Dornier Model 328–300 series airplanes. This proposed AD would require installing a drain hole in the lower skin of the left- and right-hand elevator horns. This proposed AD is prompted by reports of water found in the elevator assembly. We are proposing this AD to prevent water or ice accumulating in the elevator assembly, which could result in possible corrosion that reduces the structural integrity of the flight control surface, or in an unbalanced flight control surface. These conditions could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by March 17, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact AvCraft Aerospace GmbH, PO Box 1103, D–82230 Wessling, Germany.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20345; the directorate identifier for this docket is 2004–NM–101–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20345; Directorate Identifier 2004–NM–101–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified us that an unsafe condition may exist on certain Dornier Model 328–300 series airplanes. The LBA advises that there have been reports that, during maintenance, water (from rain or condensation) was found in the elevator assembly. The water accumulates in the elevator due to the lack of a drain hole and could freeze in a cold environment (*e.g.*, due to high altitude or winter weather). Accumulated water or ice in the elevator assembly, if not corrected, could result in possible corrosion that reduces the structural integrity of the flight control surface, or in an unbalanced flight control surface. These conditions could result in reduced controllability of the airplane.

Relevant Service Information

AvCraft Aerospace GmbH has issued Dornier Service Bulletin SB–328J–55–203, Revision 1, dated November 19, 2003. The service bulletin describes procedures for installing a drain hole in the lower skin of the left- and right-hand elevator horns. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The LBA mandated the service information and issued German airworthiness directive D–2004–005, dated January 8, 2004, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. We have examined the LBA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installing drain hole	1	$65	$100	$165	49	$8,085

Authority of This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Fairchild Dornier GMBH (Formerly Dornier Luftfahrt GmbH): Docket No. FAA–2005–20345; Directorate Identifier 2004–NM–101–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by March 17, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dornier Model 328–300 series airplanes, serial numbers 3105 through 3219 inclusive, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of water found in the elevator assembly. We are issuing this AD to prevent water accumulating in the elevator assembly, which could result in possible corrosion that reduces the structural integrity of the flight control surface, or in an unbalanced flight control surface. These conditions could result in reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation

(f) Which 90 days after the effective date of this AD, install a drain hole in the lower skin of the left- and right-hand elevator horns in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328J–55–203, Revision 1, dated November 19, 2003.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) German airworthiness directive D–2004–005, dated January 8, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on January 31, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2828 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20357; Directorate Identifier 2004–NM–120–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767 series airplanes. This proposed AD would require replacing hinge assemblies with new hinge assemblies in the outboard overhead stowage bins and reworking hinge assemblies in the outboard overhead stowage bins that are adjacent to curtain tracks. This proposed AD is prompted by reports of hinge assemblies of outboard overhead stowage bins breaking or the stowage bin doors not latching properly. We are proposing this AD to prevent the outboard overhead stowage bins opening during flight and releasing baggage, and consequently cause passenger injury and blockage of the aisles during emergency egress.

DATES: We must receive comments on this proposed AD by April 1, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20357; the directorate identifier for this docket is 2004–NM–120–AD.

FOR FURTHER INFORMATION CONTACT: Susan Rosanske, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6448; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20357; Directorate Identifier 2004–NM–120–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in

person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that operators have experienced instances of hinge assemblies breaking on outboard overhead stowage bins on Boeing Model 767 series airplanes. It has been determined that the hinge assemblies do not meet strength standards and could break or latch improperly. This condition, if not corrected, could result in the outboard overhead stowage bins opening during flight and releasing baggage, and consequently cause passenger injury and blockage of the aisles during emergency egress.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 767–25–0078, Revision 4, dated June 10, 2004. The service bulletin describes procedures for replacing the hinge assemblies in the outboard overhead stowage bins with new, stiffer four-bar linkage hinge assemblies. The service bulletin also describes procedures for reworking hinge assemblies in the outboard overhead stowage bins that are adjacent to curtain tracks. This service bulletin supersedes Boeing Service Bulletin 767–25–47. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition, except as described in ''Differences Between the Proposed AD and the Service Bulletin.''

Differences Between the Proposed AD and the Service Bulletin

Although the service bulletin recommends accomplishing the hinge assembly replacements ''as soon as manpower and facilities are available,'' the manufacturer has recommended a compliance time of 72 months.

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions according to a method approved by the FAA.

These differences have been coordinated with the manufacturer.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require replacing hinge assemblies having part number 413T1017–() with new hinge assemblies having part number 413T1002–() in the outboard overhead stowage bins. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

There are about 172 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 75 airplanes of U.S. registry. The proposed actions would take about 20 work hours (.33 work hours per stowage bins; there are about 60 bins on an airplane) per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $154,560 per airplane ($2,576 per bin). Based on these figures, the estimated cost of the proposed AD for U.S. operators is $11,689,500, or $155,860 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the actions required by this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. However, we have been advised that the terminating modification has already been installed on some affected overhead stowage bins on some airplanes. Therefore, the future economic cost impact of this rule on U.S. operators is expected to be less than the cost impact figure indicated above.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–20357; Directorate Identifier 2004–NM–120–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by April 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200 and –300 series airplanes, certificated in any category; as listed in Boeing Special Attention Service Bulletin 767–25–0078, Revision 4, June 10, 2004.

Unsafe Condition

(d) This AD was prompted by reports of hinge assemblies of outboard overhead stowage bins breaking or the stowage bin doors not latching properly. We are issuing this AD to prevent the outboard overhead stowage bins opening during flight and releasing baggage, and consequently cause passenger injury and blockage of the aisles during emergency egress.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replacement

(f) Within 72 months after the effective date of this AD, do paragraphs (f)(1) and (f)(2) of this AD.

(1) Replace both hinge assemblies in the outboard overhead stowage bins with new hinge assemblies, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0078, Revision 4, dated June 10, 2004. If, during the replacement, any hinge does not close within the limits specified in the service bulletin, before further flight, repair the hinge according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(2) Rework hinges that are in stowage bins located adjacent to a curtain track in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0078, Revision 4, dated June 10, 2004.

Previously Accomplished Actions

(g) Replacement of the hinge assemblies with new hinge assemblies accomplished before the effective date of this AD in accordance with a Boeing service bulletin listed in Table 1 of this AD is acceptable for compliance with the requirements of paragraph (f) of this AD, except as specified in paragraph (h) of this AD.

TABLE 1.—ACCEPTABLE BOEING SERVICE BULLETINS

Boeing—	Revision level	Dated
Service Bulletin 767–25–0078	Original	June 25, 1987.
Service Bulletin 767–25–0078	1	May 19, 1988.
Service Bulletin 767–25–0078 (see paragraph (h) of this AD)	2	March 16, 1989.
Special Attention Service Bulletin 767–25–0078	3	July 12, 2001.

(h) Boeing Special Attention Service Bulletin 767–25–0078, Revision 2, dated March 16, 1989, allows for replacement of the hinge assemblies on an attrition basis (replacing the existing hinge assembly when it is broken or worn beyond functionality with a new hinge assembly). For this reason, airplanes that have been modified in accordance with Boeing Special Attention Service Bulletin 767–25–0078, Revision 2, dated March 16, 1989, may still have some hinge assemblies that have not been replaced or reworked per the service bulletin. In such cases, this AD requires that all applicable hinge assemblies be replaced and reworked within the compliance time specified in paragraph (f).

Parts Installation

(i) As of the effective date of this AD, no one may install a hinge assembly in the outboard overhead stowage bins, having part number 413T1017–() on any airplane to which this AD applies.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on February 6, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2833 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20356; Directorate Identifier 2004–NM–115–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD would require repetitive inspections of the stiffeners at left buttock line (LBL) and right buttock line (RBL) 6.15 for cracks; and replacement of both stiffeners with new, improved stiffeners if any stiffener is found cracked. This proposed AD would also allow replacement of both stiffeners at LBL and RBL 6.15 with new, improved stiffeners, which terminates the repetitive inspections. This proposed AD is prompted by reports of cracks in the stiffeners at LBL and RBL 6.15 on the rear spar of the wing center section. We are proposing this AD to detect and correct cracks in the stiffeners at LBL and RBL 6.15, which could result in damage to the keel beam structure and consequently reduce the capability of the airplane to sustain flight loads.

DATES: We must receive comments on this proposed AD by April 1, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20356; the directorate identifier for this docket is 2004–NM–115–AD.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA,

Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20356; Directorate Identifier 2004–NM–115–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received reports indicating that cracks have been found in the stiffeners at left buttock line (LBL) 6.15 and at right buttock line (RBL) 6.15 on the rear spar of the wing center section on several Boeing Model 737–300 series airplanes. On two of those airplanes, the stiffeners at LBL and RBL 6.15 were cracked all the way through, and the keel beam structure was damaged. These airplanes had accumulated between 20,697 and 47,496 total flight cycles. In another instance, on a Model 737–200 series airplane, the stiffener at RBL 6.15 was also cracked all the way through, just below the lower spar chord. That airplane had accumulated 40,888 total flight cycles.

The stiffeners on certain Model 737–100, –200C, –400, and –500 series airplanes are identical to those on the affected Model 737–200 and –300 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

The existing stiffeners are made from 7075–T6511 aluminum extrusion and have only one flange for attachment to the rear spar. These stiffeners do not provide the necessary strength to prevent cracks at LBL and RBL 6.15. This condition, if not detected and corrected, could result in damage to the keel beam structure and consequently reduce the capability of the airplane to sustain flight loads.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–57A1269, Revision 1, dated September 16, 2004. The service bulletin describes procedures for doing repetitive detailed inspections of the stiffeners at LBL and RBL 6.15 for cracks; and replacing both stiffeners with new, improved stiffeners if any stiffener is found cracked. Replacement of a stiffener includes:

- Doing an eddy current inspection of all open fastener holes after removing the stiffener, after removing the gusset and grommet, and after removing the stiffener;
- Installing nutplates and ground studs; and
- Drilling holes, machining the spotface, and applying a primer for pre-installation of the stiffener.

Replacement of both stiffeners at LBL and RBL 6.15 with new, improved stiffeners eliminates the need for repetitive inspections. Accomplishing the actions specified in the service bulletin is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require repetitive detailed inspections of the stiffeners at LBL and RBL 6.15 for cracks; and replacement of both stiffeners with new, improved stiffeners if any stiffener is found cracked. This proposed AD would also allow replacement of stiffeners at LBL and RBL 6.15 with new, improved stiffeners, which terminates the repetitive inspections. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Difference Between the Proposed AD and the Service Bulletin.''

Difference Between the Proposed AD and the Service Bulletin

The service bulletin specifies that you may contact the manufacturer for instruction on how to repair certain conditions, but this proposed AD would require you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the FAA to make those findings.

Costs of Compliance

This proposed AD would affect about 3,132 airplanes worldwide. The following table provides the estimated costs, at an average labor rate of $65 per hour, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	No. of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle	1	None	$65, per inspection cycle	1,384	$89,960, per inspection cycle.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–20356; Directorate Identifier 2004–NM–115–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by April 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by cracks in the stiffeners at left buttock line (LBL) and right buttock line (RBL) 6.15 on the rear spar of the wing center section. We are issuing this AD to detect and correct cracks in the stiffeners at LBL and RBL 6.15, which could result in damage to the keel beam structure and consequently reduce the capability of the airplane to sustain flight loads.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1269, Revision 1, dated September 16, 2004.

Initial and Repetitive Inspections

(g) Before accumulating 15,000 total flights cycles, or within 180 days after the effective date of this AD, whichever occurs later: Do a detailed inspection of the stiffeners at LBL and RBL 6.15 for cracks, in accordance with Part I of the service bulletin. Thereafter at intervals not to exceed 4,500 flight cycles, repeat the detailed inspection until the stiffeners at LBL and RBL 6.15 have been replaced, in accordance with paragraph (h) or (i) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Replacement of Cracked Stiffener

(h) If any crack is found during any inspection required by this AD, before further flight, replace both stiffeners with new, improved stiffeners by doing all of the applicable actions in Part II through Part IX of the service bulletin; except where the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD. Accomplishing the replacement terminates the repetitive inspections required by paragraph (g) of this AD.

Optional Terminating Action

(1) Replacement of both stiffeners at LBL and RBL 6.15 in accordance with paragraph (h) of this AD terminates the repetitive inspections required by this AD.

Credit for Previous Service Bulletin

(j) The actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–57A1269, dated December 4, 2003, are acceptable for compliance with the corresponding actions required by this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on February 6, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2834 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20355; Directorate Identifier 2004–NM–198–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Airplanes, Equipped With An Auxiliary Fuel Tank Having a Fuel Pump Installed

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Boeing Model 727 airplanes equipped with an auxiliary fuel tank having a fuel pump installed. This proposed AD would require revising the airplane flight manual to include limitations on operating the fuel pumps for the auxiliary fuel tank. This proposed AD is prompted by a design review of the fuel pump installation, which revealed a potential unsafe condition related to the auxiliary fuel tank(s). We are proposing this AD to prevent dry operation of the fuel pumps for the auxiliary fuel tank, which could create a potential ignition source inside the auxiliary fuel tank that could result in a fire or explosion of the auxiliary fuel tank.

DATES: We must receive comments on this proposed AD by April 1, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20355; the directorate identifier for this docket is 2004–NM–198–AD.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20355; Directorate Identifier 2004–NM–198–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The FAA has examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

A design review of the fuel pump installation on the auxiliary fuel tank of Boeing Model 727 airplanes has revealed a potential unsafe condition related to the auxiliary fuel tank(s). Dry operation of the fuel pumps for the auxiliary fuel tank could cause metal-to-metal contact that may create high temperatures or sparks. This could create a potential ignition source inside the auxiliary fuel tank, which could result in a fire or explosion of the auxiliary fuel tank.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same

type design. Therefore, we are proposing this AD, which would require revising the airplane flight manual (AFM) to include limitations on operating the fuel pumps for the auxiliary fuel tank.

In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the average utilization of the affected fleet. In light of all of these factors, we find that a 30-day compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Costs of Compliance

There are about 300 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 200 airplanes of U.S. registry. The proposed AFM revision would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $13,000, or $65 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–20355; Directorate Identifier 2004–NM–198–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by April 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes; certificated in any category; equipped with an auxiliary fuel tank having a fuel pump installed.

Unsafe Condition

(d) This AD was prompted by a design review of the fuel pump installation, which revealed a potential unsafe condition related to the auxiliary fuel tank(s). We are issuing this AD to prevent dry operation of the fuel pumps for the auxiliary fuel tank, which could create a potential ignition source inside the auxiliary fuel tank that could result in a fire or explosion of the auxiliary fuel tank.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Airplane Flight Manual (AFM) Revision

(f) Within 30 days after the effective date of this AD, revise the Limitations section of the AFM to contain the following information. This may be done by inserting a copy of this AD in the AFM.

Auxiliary Tank Fuel Pumps

Auxiliary tank fuel pump switches must not be positioned 'ON' unless the auxiliary tank(s) contain fuel. Auxiliary tank(s) fuel pumps must not be 'ON' unless personnel are available in the flight deck to monitor low pressure lights.

When established in a level attitude at cruise, if the auxiliary tank(s) contain usable fuel and the auxiliary tank(s) switches are 'OFF,' the auxiliary tank(s) pump switches should be positioned 'ON' again.

Each auxiliary tank fuel pump switch must be positioned 'OFF' without delay when the respective auxiliary tank fuel pump low pressure light illuminates.''

Note 1: When text identical to that in paragraph (f) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on February 6, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2835 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20354; Directorate Identifier 2004–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500, Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD would require an inspection for chafing of certain wire

bundles located above the center fuel tank, corrective actions if necessary, and replacement of wire bundle clamps with new clamps. This proposed AD is prompted by the results of fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent chafed wire bundles near the center fuel tank, which could cause electrical arcing through the tank wall and ignition of fuel vapor in the fuel tank, and result in a fuel tank explosion.

DATES: We must receive comments on this proposed AD by April 1, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20354; the directorate identifier for this docket is 2004–NM–166–AD.

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20354; Directorate Identifier 2004–NM–166–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

Based on this process, we have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources near fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

A Boeing and FAA team inspected several 737 airplanes as part of the SFAR 88 system safety analysis. The team identified wire bundles in close proximity of the center fuel tank. The wire bundles were located below the passenger compartment, above the center fuel tank, aft of station 540 at right buttock line (RBL) and left buttock line (LBL) 24.50. Although no chafing was found on these wire bundles, if these wire bundles chafe, they could arc through the center fuel tank wall, which could result in a fuel tank explosion.

Relevant Service Information

We have reviewed Boeing Service Bulletin 737–28–1208, dated July 8, 2004. For all airplane groups, as specified in the service bulletin, the service bulletin describes procedures for inspecting for chafed wire bundles located below the passenger compartment, above the center fuel tank, aft of station 540 to approximately station 663.75, at RBL and LBL 24.50, and corrective actions. Depending on the airplane group, the corrective actions include repairing any wire damage in accordance with chapter 20–

10–13 of the Boeing Standard Wiring Practices Manual (BSWPM) or an ''approved equivalent procedure.'' For all airplane groups, the service bulletin also includes procedures for replacing the wire bundle clamps located immediately aft of station 540. For certain airplane groups, the service bulletin includes procedures for adjusting a certain wire bundle clamp. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Bulletin.''

Difference Between the Proposed AD and Service Bulletin

For Group 1 airplanes, as specified in Boeing Service Bulletin 737–28–1208, the service bulletin states that operators may repair wire damage according to either chapter 20–10–13 of the BSWPM or an approved equivalent procedure. This proposed AD would require operators to accomplish the repair of any wire damage according to the procedures in the BSWPM. An approved equivalent procedure for the repair of wire damage may be used only if approved as an alternative method of compliance under the provisions of paragraph (h) of this proposed AD.

Where the service bulletin states that a specific chapter of the Boeing 737 Airplane Maintenance Manual or an approved equivalent procedure may be used for removing and re-installing passenger cabin furnishings, and removing and returning power to the airplane, an approved equivalent procedure may be used.

Clarification of Inspection Terminology

In this proposed AD, the ''inspection'' specified in the Boeing service bulletin is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Costs of Compliance

This proposed AD would affect about 2,871 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	2	$65	None	$130	1042	$135,460
Replacement of wire bundle clamps	2	65	$190	320	1042	333,440

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–20354; Directorate Identifier 2004–NM–166–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by April 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent chafed wire bundles near the center fuel tank, which could cause electrical arcing through the tank wall and ignition of fuel vapor in the fuel tank, and result in a fuel tank explosion.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection of Wire Bundles and Corrective Actions

(f) Within 60 months after the effective date of this AD: Perform a detailed inspection for chafing of the wire bundles located below the passenger compartment, above the center fuel tank, aft of station 540 to approximately station 663.75, right buttock line and left buttock line 24.50, and any applicable corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–28–1208, dated July 8, 2004. Any corrective actions must be done before further flight. Where the service bulletin states that repair of wire damage may be done in accordance with an ''approved equivalent procedure,'' the repair must be accomplished according to the chapter of the Boeing Standard Wiring Practices Manual specified in the service bulletin. Approved equivalent procedures may be used for removing and re-installing passenger cabin furnishings, and removing and returning power to the airplane.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Adjustment/Replacement of Wire Bundle Clamps

(g) After performing the actions required by paragraph (f) of this AD: Before further flight, adjust and replace, as applicable, the wire bundle clamps located aft of station 540, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–28–1208, dated July 8, 2004.

Alternative Methods of Compliance

(h) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on February 6, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2836 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20379; Directorate Identifier 2004–NM–174–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A310 series airplanes. This proposed AD would require measuring the clearance between the compensator and the guide assembly of probe no. 1 on the outboard fuel tanks, and performing corrective actions if necessary. This proposed AD is prompted by the results of fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent interference between the compensator and the guide assembly of probe no. 1, which could create an ignition source that could result in a fire or explosion.

DATES: We must receive comments on this proposed AD by March 17, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20379; the directorate identifier for this docket is 2004–NM–174–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20379; Directorate Identifier 2004–NM–174–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The FAA has examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the

service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to cooperate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on all Airbus Model A310 series airplanes. The DGAC advises that a design review has revealed the potential for insufficient clearance between the compensator and the guide assembly of probe no. 1 on the outboard fuel tanks. Also, the clearance on probe no. 1 of the left-hand outboard fuel tank may be different than on probe no. 1 of the right-hand outboard fuel tanks. This condition, if not corrected, could cause interference between the compensator and the guide assembly of probe no. 1, which could create an ignition source that could result in a fire or explosion.

Relevant Service Information

Airbus has issued Service Bulletin A310–28–2152, dated January 12, 2004. The service bulletin describes procedures for measuring the clearance between the compensator and the guide assembly of probe no. 1 on the left- and right-hand outboard fuel tanks, and performing corrective action if the clearance is less than 3 mm. The corrective action consists of modifying the guide assembly of probe no. 1 to ensure that there is 3 mm of clearance or more between the compensator and the guide assembly. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2004–125, dated July 21, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	2	$65	None	$130	59	$7,670

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order

13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2005–20379; Directorate Identifier 2004–NM–174–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by March 17, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model 310 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent interference between the compensator and the guide assembly of probe no. 1, which could create an ignition source that could result in a fire or explosion.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Measurement

(f) Within 4,000 flight hours after the effective date of this AD, measure the clearance between the compensator and the guide assembly of probe no. 1 on the left- and right-hand outboard fuel tanks, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–28–2152, dated January 12, 2004. If the clearance between the compensator and the guide assembly is less than 3 mm, before further flight, modify the guide assembly of probe no. 1 to provide clearance of 3 mm or more between the compensator and the guide assembly, in accordance with the Accomplishment Instructions of the service bulletin.

Parts Installation

(g) As of the effective date of this AD, no person may install probe no. 1 on the left- or right-hand outboard fuel tank unless the requirements of paragraph (f) of this AD have been accomplished.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) French airworthiness directive F–2004–125, dated July 21, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on February 9, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2886 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD01–05–005]

RIN 1625–AA08

Special Local Regulations for Marine Event; Manhattan College Invitational Regatta, Harlem River, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary special local regulation for a regatta located on the Harlem River. This proposed action would protect life and property on the navigable waters of the United States during the event. This action would restrict vessel traffic in a portion of the Harlem River, New York, NY, during the event.

DATES: Comments and related material must reach the Coast Guard on or before March 17, 2005.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, Room 203, Staten Island, NY 10305, or hand deliver them between the hours of 8 a.m. and 3 p.m., at the same address above, Monday through Friday, except Federal holidays. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–05–005 and are available for inspection or copying at the address indicated above between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4191.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–05–005), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

If, as we anticipate, we make this temporary final rule effective less than 30 days after publication in the **Federal Register**, we will explain in that publication, as required by 5 U.S.C. (d)(3), our good cause for doing so.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Division at the address under **ADDRESSES** explaining why one would be beneficial. If we

determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard has received an application from Manhattan College to hold a rowing regatta on the waters of the Harlem River. This rule would establish a temporary special local regulation for that event, the Manhattan College Invitational Regatta. This action is necessary to protect life and property on the navigable waters of the United States during the event. This temporary special local regulation would be enforced for twelve hours between the hours of 7 a.m and 7 p.m. on Saturday April 2, 2005.

Discussion of Rule

This rule would establish a temporary special local regulation in all waters of the Harlem River between the Macombs Dam Bridge and the University Heights Bridge. The proposed regulation would restrict general navigation in the regulated area located on the Harlem River. General navigation would be restricted unless the COTP, New York or the designated on-scene patrol personnel authorize transit. These designated on-scene patrol personnel comprise commissioned, warrant, and petty officers of the United States Coast Guard.

This special local regulation would be in effect from 7 a.m. until 7 p.m. on Saturday, April 2, 2005. It would prevent vessels from transiting a portion of the Harlem River and is needed to protect the maritime public and the event participants. Vessels may be authorized to transit through the zone and such authorization may be requested by contacting the Activities New York Marine Events Coordinator at (718) 354–4197, at least 2 business days prior to the event. Public notifications would be made prior to the event via the Local Notice to Mariners and Marine Information Broadcast to allow maritime interests ample opportunity to schedule around the event.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This finding is based on the limited use of this portion of waterway by other maritime interests and that limited accommodations will be made to meet the needs of commercial and other vessel traffic that require transit times during this event. The Coast Guard will provide further notice of the date and time of the regatta and this notice will be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts; and on the Internet at *http://homeport.uscg.mil.*

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit a portion of the affected waterway during the time this zone is enforced.

This special local regulation would not have a significant economic impact on a substantial number of small entities for reasons enumerated under the ''Regulatory Evaluation'' section.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an

economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule would not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(h), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(h) as it establishes special local regulations. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1223; and Department of Homeland Security Delegation No. 0170.1.

2. From 7 a.m. to 7 p.m. on April 2, 2005, add temporary § 100.35T01–005 to read as follows: *§ 100.35T01–005 Special Local Regulation; Manhattan College Invitational Regatta, Harlem River, New York, NY*

(a) *Regulated area.* All portions of the Harlem River between the Macombs Dam Bridge and the University Heights Bridge, New York, NY.

(b) *Enforcement period.* This section will be enforced from 7 a.m. to 7 p.m. on Saturday, April 2, 2005.

(c) *Special Local Regulations.* (1) All vessels are prohibited from transiting the area without authorization of the COTP, New York or the designated on-scene-patrol personnel.

(2) Authorization to transit the area during the enforcement period may be obtained by contacting Activities New York, Marine Events Coordinator, at (718) 354–4197, at least 2 business days prior to the event.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: February 8, 2005.

John L. Grenier,

Captain, U. S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 05–2869 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–15–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2005–3; Order No. 1430]

Negotiated Service Agreements

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document initiates the third in a series of rulemakings on procedures related to Negotiated Service Agreements. This proposal addresses rules applicable to Postal Service requests to extend or modify previously recommended Negotiated Service Agreements that are currently in effect. The changes, if adopted, will assist in clarifying the type of requests that qualify as extensions and the type of conditions that constitute modifications.

DATES: Initial comments: March 14, 2005; reply comments: April 11, 2005.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, at 202–789–6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

68 FR 52552, September 4, 2003.
69 FR 7574, February 18, 2004.
70 FR 4802, January 31, 2005.

In Opinion and Recommended Decision, Docket No. MC2002–2 (Opinion), the Commission made a commitment to initiate a series of rulemakings designed to facilitate consideration of Postal Service requests based on Negotiated Service Agreements.[1] *See,* Opinion paras. 1006, 2007, 4026, 4041–2, 7026, and 8023. The first rulemaking, docketed as RM2003–5, developed rules for baseline and for functionally equivalent Negotiated Service Agreements.[2] It also established the organizational framework for the complete set of Commission rules applicable to requests based on Negotiated Service Agreements.[3]

[1] Docket No. MC2002–2, Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One Services, Inc., was the first docket in which the Commission considered and recommended a Postal Service request predicated on a Negotiated Service Agreement.

[2] PRC Order No. 1391 established the rules applicable to baseline and functionally equivalent Negotiated Service Agreements. The rules are incorporated into the Commission's Rules of Practice and Procedure at Subpart L. 39 CFR 3001.190 *et seq.*

[3] Space was reserved at 39 CFR 3001.197 for requests to renew previously recommended

A second rulemaking, docketed as RM2005–2, has been initiated to explore whether improvements can be made to the previously issued rules applicable to functionally equivalent Negotiated Service Agreements. The Postal Service first invoked the rules applicable to functionally equivalent Negotiated Service Agreements in requests filed on June 21, 2004, for proposed Negotiated Service Agreements with Discover Financial Services, Inc. and Bank One Corporation[4].

The rules applicable to new baseline Negotiated Service Agreements remain untested as the Postal Service has not submitted a request for a new baseline agreement.

This notice and order represents the initiation of a third rulemaking to address rules applicable to: (1) Postal Service requests to extend the duration of previously recommended and currently in effect Negotiated Service Agreements, and (2) Postal Service requests to make modifications to previously recommended and currently in effect Negotiated Service Agreements. Both sets of rules assume that the previously recommended and currently in effect Negotiated Service Agreements were fully litigated in previous dockets where all outstanding issues have been resolved. The rules also assume that the modifications being proposed in the new requests are non-controversial, and do not materially alter the nature of the existing agreements. These are necessary assumptions if the Commission is to provide expedited review and rapid action in issuing recommendations on such requests. The proposed rules, appearing below the Secretary's signature to this notice and order, are discussed below.

Proposed 39 CFR 3001.197 requests to renew previously recommended Negotiated Service Agreements with existing participant(s). Subsection (a) establishes that rule 197 is applicable to requests to extend the duration of a previously recommended and currently in effect Negotiated Service Agreement (the existing agreement). The intent is to limit use of the rule to instances where the proposed agreement and the existing agreement share substantially identical obligations. This restriction is necessary to limit the issues open to litigation, and to otherwise expedite the proceeding as much as possible. In instances where there are no contested issues it should be possible for the Commission to issue its recommendation shortly after the prehearing conference.

Rule 197 allows for three instances where modifications to the terms and conditions (including modifications to the Domestic Mail Classification Schedule) may be appropriate: (1) Correcting a technical defect, (2) updating the schedule of rates and fees, and (3) accounting for an intervening event since the recommendation of the existing agreement. The rule notes that the above modifications should not materially alter the nature of the existing agreement. This notation serves as a reminder of the limited applicability of rule 197, and that modifications of any substance may not allow for expedited review, or in the more extreme case may cause the request to be considered de novo. This rule is inapplicable when material features are proposed to be significantly modified, added, or removed from the existing agreement.

The exceptions are provided predominately to allow for correction of errors or to update the terms and conditions to the current situation when the existing agreement is renewed. The correction of technical defects, for example, allows for correction of scrivener's errors, and to correct for errors in description. An example of an error in description could be an instance of where the parties to the contract, the Commission, and the participants in the original docket understood the intent of a term or condition, but what was actually described in the documentation was technically not correct. Thus, the exception would allow the documentation to be corrected or clarified.

Updating the schedule of rates and fees refers to updating the schedule of rates and fees to reflect the current conditions at the time the Negotiated Service Agreement is extended. It does not refer to a wholesale revamping of the schedule of rates and fees to accommodate new or remove existing incentives, or which change the underlying nature of the existing agreement.

Accounting for intervening events since the recommendation of the existing agreement refers to an internal or an external event, typically unanticipated or unforeseen, that has occurred since recommendation of the agreement and that has an impact on some aspect of the agreement. For example, a merger, a change in the nature of a provided postal service, or an external economic occurrence that forces a change in business plans could be intervening events. It is important to stress that the more significant the event and the associated modification required, the less applicable rule 197 becomes and the more likely that the request would have to be considered de novo.

Subsections (a)(1) through (7) highlight particular areas of interest to the Commission in reviewing requests to renew existing agreements. Supplemental testimony might be required to fully comply with these subsections.

Subsection (a)(1) requires identification of the record testimony from the existing agreement docket, or any other previously concluded docket, on which the Postal Service proposes to rely. The identified record testimony will form the basis of the record of the instant request, with supplemental testimony completing the record where necessary.

Subsection (a)(2) focuses on the modifications that are being proposed to be made to the agreement, which includes the terms and conditions of the actual contract and the contents of the Domestic Mail Classification Schedule as previously recommended by the Commission and approved by the Governors of the United States Postal Service. It requires a ''from to'' description of all proposed modifications to the agreement's documentation.

Subsection (a)(3) requires an explanation or reason for the modifications that are being proposed to be made to the agreement. It focuses on describing the technical defect, rationale for revising the schedule of rates and fees, or intervening event, if any, that has necessitated a proposed modification.

Subsection (a)(4) requires the Postal Service to provide all studies pertinent to the request which have been completed since the recommendation of the existing agreement. These studies are likely to be probative of the level of success of the existing agreement or they might shed light on the proposals being made in the request.

Subsection (a)(5) requires a financial analysis applicable to the existing agreement comparing actual performance with predicted performance. Because the request for extending the duration must occur before the actual termination date of the existing agreement, an allowance is made for a final projection based on

Negotiated Service Agreements with existing participant(s), and at 39 CFR 3001.198 for requests to modify previously recommended Negotiated Service Agreements.

[4] Request of the United States Postal Service for a Recommended Decision on Classifications, Rates and Fees to Implement Functionally Equivalent Negotiated Service Agreement with Discover Financial Services, Inc., June 21, 2004; Request of the United States Postal Service for a Recommended Decision on Classifications, Rates and Fees to Implement Functionally Equivalent Negotiated Service Agreement with Bank One Corporation, June 21, 2004.

actual data. Except for the final projection, all of the data required to comply with this subsection previously should have been collected as required by the existing agreement's data collection plan.[5] The intent of this subsection is to facilitate the continuation of beneficial agreements.

Subsection (a)(6) requires a financial analysis to be performed over the duration of the extended agreement. The analysis is to be performed utilizing the methodology employed by the Commission in its recommendation of the existing agreement. Utilizing the Commission's methodology to the maximum extent possible should avoid the need to re-examine and possibly relitigate methodology-related issues, which should result in an expedited proceeding. The financial analysis will weigh heavily in the Commission's recommendation.

Subsection (a)(7) requires the Postal Service to identify circumstances that are unique to the request. This is a catch-all provision where the proponents can provide the Commission with additional information pertinent to the Commission's analysis. For example, any change in a service, change in a mailer's business plans, or change in the interaction between the mailer and the Postal Service since the initial recommendation that potentially bears on the Commission's recommendation should be discussed.

Subsection (b) requires the Postal Service to provide written notice of its request to certain participants who are assumed to be those potentially interested in the proceeding. This is in addition to the public notice that will result from filing the request. The requirement balances the Commission's intent to limit the time period for intervention which will help expedite consideration of requests under this rule, and the requirement for interested participants to be adequately notified of a pending proceeding.

Subsection (c) establishes that a prehearing conference will be scheduled for each request. At the time of the prehearing conference, participants shall be prepared to address whether or not it is appropriate to proceed under the rules for renewing existing agreements, and whether or not there are any material issues of fact that require discovery or evidentiary hearings. The Commission will promptly determine, on the basis of materials submitted with the request and argument presented at or before the prehearing conference, whether or not it is appropriate to proceed under these rules and what direction the proceeding should follow. If it is determined that it is not appropriate to proceed under 39 CFR 3001.197, the Commission shall proceed under 39 CFR 3001.195. After experience is gained operating under rule 197(c), and the review of Negotiated Service Agreements becomes routine, the Commission will entertain proposals to further streamline the early phases of the proceeding.

Proposed 39 CFR 3001.198 requests to modify previously recommended Negotiated Service Agreements. Subsection (a) establishes that rule 198 is applicable to requests to modify a previously recommended and currently in effect Negotiated Service Agreement (the existing agreement). The intent of the rule is to expedite proceedings where limited modifications are being proposed that do not materially alter the nature of the agreement. The rule limits modifications to those: (1) Correcting a technical defect, (2) accounting for unforeseen circumstances not apparent when the existing agreement was first recommended, and (3) accounting for an intervening event since the recommendation of the existing agreement. The allowed modifications are not meant to include instances where a material feature is proposed to be significantly modified, added, or removed from the existing agreement. Restricting the allowable types of modifications is necessary to limit the issues open to litigation, and to otherwise expedite the proceeding as much as possible. The proceeding should take considerably less time to review, depending upon the extent of the modifications, than having to review the entire agreement de novo.

The correction of technical defects and accounting for intervening events since the recommendation of the existing agreement were discussed above in proposed rule 197. Accounting for unforeseen circumstances not apparent when the existing agreement was recommended is intended to allow for modifications to be made after some experience has been gained operating under the agreement. For example, it might not be initially recognized that there is a more advantageous method of performing a specific function under the agreement. In such an instance, it might be appropriate to modify the agreement to reflect utilization of the more advantageous method.

Subsections (a)(1) through (6) highlights particular areas of interest to the Commission in reviewing requests to modify existing agreements. Supplemental testimony might be required to fully comply with these subsections. Subsection (a)(1) requires identification of the record testimony from the existing agreement docket, or any other previously concluded docket, on which the Postal Service proposes to rely. The identified record testimony will form the basis of the record of the instant request, with supplemental testimony completing the record where necessary.

Subsection (a)(2) focuses on the modifications that are being proposed to be made to the agreement, which includes the terms and conditions of the actual contract and the contents of the Domestic Mail Classification Schedule as previously recommended by the Commission and approved by the Governors of the United States Postal Service. It requires a ''from to'' description of all proposed modifications to the agreement's documentation.

Subsection (a)(3) requires an explanation or reason for the modifications that are being proposed to be made to the agreement. It focuses on describing the technical defect, unforeseen circumstance, or intervening event that has necessitated the proposed modification.

Subsection (a)(4) requires the Postal Service to provide all studies pertinent to the request which have been completed since the recommendation of the existing agreement. These studies are likely to be probative of the level of success of the existing agreement or they might shed light on the proposals being made in the request.

Subsection (a)(5) requires a financial analysis to be performed over the duration of the extended agreement. It should be performed only if the proposed modification has an effect upon the financial analysis in the opinion recommending the existing agreement. The analysis is to be performed utilizing the methodology employed by the Commission in its recommendation of the existing agreement. Utilizing the Commission's methodology, to the maximum extent possible, will avoid the need to reexamine and possibly relitigate methodology-related issues, which should result in an expedited proceeding.

Subsection (a)(6) requires the Postal Service to identify circumstances that are unique to the request. This is a catch-all provision where the proponents can provide the Commission with additional information pertinent to the Commission's analysis. For example, any change in a service, change in a mailer's business plans, or change in the interaction between the mailer and the Postal Service since the

[5] Required by 39 CFR 3001.193(g), as of requests filed after February 11, 2004.

initial recommendation that potentially bears on the Commission's recommendation should be discussed.

Subsections (b) and (c) parallel the notice and prehearing conference requirements discussed above for 39 CFR 3001.197(b) and (c).

Comments. By this order, the Commission hereby gives notice that comments from interested persons concerning the proposed amendments to the Commission's Rules are due on or before March 14, 2005. Reply comments may also be filed and are due April 11, 2005.

Representation of the general public. In conformance with 39 CFR 3624(a) of title 39, U.S. Code, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Ordering Paragraphs

It is ordered:

1. Docket No. RM2005–3 is established to consider Commission rules applicable to Postal Service proposals to extend the duration of, or make modifications to, previously recommended and currently in effect Negotiated Service Agreements.

2. Interested persons may submit comments no later than March 14, 2005.

3. Reply comments also may be filed and are due April 11, 2005.

4. Shelley S. Dreifuss, director of the Office of the Consumer Advocate, is designated to represent the interests of the general public in this docket.

5. The Secretary shall arrange for publication of this notice of proposed rulemaking in the **Federal Register**.

Issued: February 10, 2005.

By the Commission.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative Practice and Procedure, Postal Service.

For the reasons discussed above, the Commission proposes to amend 39 CFR part 3001 as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24; 3661, 3662, 3663.

2. Amend § 3001.197 as follows:

a. Revise the heading of section 3001.197 to read as follows: Requests to renew previously recommended Negotiated Service Agreements with existing participant(s).

b. Add new paragraphs (a), (b) and (c) to read as follows:

Subpart L—Rules Applicable to Negotiated Service Agreements

§ 3001.197 Requests to renew previously recommended Negotiated Service Agreements with existing participant(s).

(a) This section governs Postal Service requests for a recommended decision seeking to extend the duration of a previously recommended and currently in effect Negotiated Service Agreement (existing agreement). The purpose of this section is to establish procedures that provide for accelerated review of Postal Service requests to extend the duration of an existing agreement under substantially identical obligations. In addition to extending the duration of the existing agreement, modifications may be entertained that do not materially alter the nature of the existing agreement for the purposes of: correcting a technical defect, updating the schedule of rates and fees, or accounting for an intervening event since the recommendation of the existing agreement. The Postal Service request shall include:

(1) Identification of the record testimony from the existing agreement docket, or any other previously concluded docket, on which the Postal Service proposes to rely, including citation to the locations of such testimony;

(2) A detailed description of all proposed modifications to the existing agreement;

(3) A detailed description of any technical defect, rationale for revising the schedule of rates and fees, or intervening event since the recommendation of the existing agreement, to substantiate the modifications proposed in (a)(2) of this section;

(4) All studies developing information pertinent to the request completed since the recommendation of the existing agreement;

(5) A comparison of the analysis presented in § 3001.193(e)(1)(ii) and § 3001.193(e)(2)(iii) applicable to the existing agreement with the actual results ascertained from implementation of the existing agreement, together with the most recent available projections for the remaining portion of the existing agreement, compared on an annual or more frequent basis;

(6) The financial impact of the proposed Negotiated Service Agreement on the Postal Service in accordance with § 3001.193(e) over the extended duration of the agreement utilizing the methodology employed by the Commission in its recommendation of the existing agreement; and

(7) If applicable, the identification of circumstances unique to the request.

(b) When the Postal Service submits a request to renew a Negotiated Service Agreement, it shall provide written notice of its request, either by hand delivery or by First-Class Mail, to all participants in the Commission docket established to consider the original agreement.

(c) The Commission will schedule a pre-hearing conference for each request. Participants shall be prepared to address at that time whether or not it is appropriate to proceed under § 3001.197, and whether or not any material issues of fact exist that require discovery or evidentiary hearings. After consideration of the material presented in support of the request, and the argument presented by the participants, if any, the Commission shall promptly issue a decision on whether or not to proceed under § 3001.197. If the Commission's decision is to not proceed under § 3001.197, the docket will proceed under § 3001.195.

3. Amend § 3001.198 as follows:

a. Revise the heading of section 3001.198 to read as follows: Requests to modify previously recommended Negotiated Service Agreements.

b. Add new paragraphs (a), (b) and (c) to read as follows:

§ 3001.198 Requests to modify previously recommended Negotiated Service Agreements.

(a) This section governs Postal Service requests for a recommended decision seeking a modification to a previously recommended and currently in effect Negotiated Service Agreement (existing agreement). The purpose of this section is to establish procedures that provide for accelerated review of Postal Service requests to modify an existing agreement where the modification is necessary to correct a technical defect, to account for unforeseen circumstances not apparent when the existing agreement was first recommended, or to account for an intervening event since the recommendation of the existing agreement. This section is not applicable to requests to extend the duration of a Negotiated Service Agreement. The Postal Service request shall include:

(1) Identification of the record testimony from the existing agreement docket, or any other previously concluded docket, on which the Postal Service proposes to rely, including citation to the locations of such testimony;

(2) A detailed description of all proposed modifications to the existing agreement;

(3) A detailed description of the technical defect, unforeseen circumstance, or intervening event, to substantiate the modifications proposed in (a)(2) of this section;

(4) All studies developing information pertinent to the request completed since the recommendation of the existing agreement;

(5) If applicable, an update of the financial impact of the Negotiated Service Agreement on the Postal Service in accordance with § 3001.193(e) over the duration of the agreement utilizing the methodology employed by the Commission in its recommendation of the existing agreement; and

(6) If applicable, the identification of circumstances unique to the request.

(b) When the Postal Service submits a request to modify a Negotiated Service Agreement, it shall provide written notice of its request, either by hand delivery or by First-Class Mail, to all participants in the Commission Docket established to consider the original agreement.

(c) The Commission will schedule a pre-hearing conference for each request. Participants shall be prepared to address at that time whether or not it is appropriate to proceed under § 3001.198, and whether or not any material issues of fact exist that require discovery or evidentiary hearings. After consideration of the material presented in support of the request, and the argument presented by the participants, if any, the Commission shall promptly issue a decision on whether or not to proceed under § 3001.198. If the Commission's decision is to not proceed under § 3001.198, the docket will proceed under § 3001.195.

[FR Doc. 05–2883 Filed 2–14–05; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7872–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Syosset Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 2 Office, announces its intent to delete the Syosset Landfill Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action.

The Syosset Landfill Superfund Site is located in the Town of Oyster Bay, Nassau County, New York. The NPL is appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and New York State, through the Department of Environmental Conservation (NYSDEC), have determined that all appropriate response actions have been completed and no further response actions are required. In addition, EPA and the NYSDEC have determined that the Site poses no significant threat to public health or the environment.

DATES: Comments concerning this proposed action, deletion of a site from the NPL, must be received by March 17, 2005.

ADDRESSES: Comments should be submitted to: Sherrel D. Henry, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Information Repositories: Comprehensive information on the Site is available for viewing and copying by appointment only at the Site information repository located at: U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308.

Hours: Monday through Friday: 9 a.m. through 5 p.m.

Information for the Site is also available for viewing at the Site Administrative Record Repositories located at: Syosset Public Library, 225 South Oyster Bay Road, Syosset, New York 11791, Tel. (516) 921–7161.

Hours: Monday through Thursday: 9 a.m. through 9 p.m., Friday: 10 a.m. through 9 p.m., Saturday: 9 a.m. through 5 p.m. and Sunday: 12 noon through 5 p.m., and Oyster Bay Town Hall, 54 Audrey Avenue, Oyster Bay, New York 11771, Tel. (516) 624–6100.

Hours: Monday through Friday: 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Henry at the address provided above, by telephone at (212) 637–4273, by electronic mail at *Henry.Sherrel@epa.gov,* or by FAX at (212) 637–3966.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA, Region 2, announces its intent to delete the Syosset Landfill Superfund Site (Site) from the NPL. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). As described in § 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at the site warrant such action.

EPA will accept comments concerning the deletion of the Site from the NPL for thirty (30) days after publication of this document in the **Federal Register**.

Section II explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses how the Site meets the NPL deletion criteria.

II. NPL Deletion Criteria

Section 300.425 (e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, will consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or,

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or,

(iii) A remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The following procedures apply to the deletion of this site:

1. EPA, Region 2, issued the Operable Unit One (OU1) Record of Decision (ROD) for the Site on September 27, 1990 which selected landfill closure as the remedy for the Site.

2. In March 1996, EPA, Region 2, issued a no further action ROD for Operable Unit 2 (OU2) which addressed ground water emanating from the landfill property.

3. Responsible parties implemented the remedy selected in the OU1 ROD as described in a Remedial Action Report dated August 1998. A Five-Year Review dated October 2001 evaluated the remedies implemented at the Site and found them to be protective of human health and the environment. A Final Close Out Report dated September 3, 2004 summarizes the actions and recent monitoring at this Site.

4. EPA, Region 2, recommends deletion and has prepared the relevant documents.

5. The State of New York, through the NYSDEC, concurred with the proposed deletion of the Site in a letter dated November 29, 2004.

6. Concurrent with this national Notice of Intent to Delete, a notice has been published in a local newspaper, and appropriate notice has been given to federal, state and local officials announcing a 30-day public comment period which starts on the date of publication of this notice in the **Federal Register** and a newspaper of record.

7. The EPA has placed relevant site documents in the Site information repositories identified above.

8. Upon completion of the thirty-(30-) day public comment period, EPA will evaluate all comments received before issuing a final decision on deletion. The EPA, Region 2, will prepare a Responsiveness Summary, if appropriate, which will address significant comments received during the public comment period. The Responsiveness Summary will be made available to the public at the information repositories.

If, after consideration of the comments it receives, EPA decides to proceed with the deletion, EPA will place a Notice of Deletion in the **Federal Register**. Deletion does not occur until the final Notice of Deletion is published in the **Federal Register**. Generally, the NPL will reflect deletions in the next final update following the final Notice publication.

Deletion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. Deletion from the NPL does not alter EPA's right to take appropriate enforcement actions. The NPL is designed primarily for informational purposes and to assist Agency management.

IV. Basis for Intended Site Deletion

The following summary provides a brief description and history of the Syosset Landfill Superfund Site and provides the Agency's rationale for recommending deletion of the Site from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

The Syosset Landfill is owned by the Town of Oyster Bay, which operated it from approximately 1933 to 1975. Between 1933 and about 1967, no restrictions were imposed on the types of wastes accepted at the landfill. Waste types disposed at the landfill included: commercial, industrial, residential, demolition, agricultural, sludge material and ash. Studies of the landfill found that it contains heavy metals, solvents, organics, oils, plasticizers, and polychlorinated biphenyls (PCBs) among other contaminants.

The Syosset Landfill was closed on January 27, 1975 because of a suspected groundwater pollution problem. A January 1983 report summarizing the results of a study performed for the Nassau County Department of Health (NCDOH) concluded that the groundwater quality was being impacted by landfill leachate. Elevated heavy metal concentrations including arsenic, cadmium, chromium and lead were detected at levels exceeding New York State Primary Drinking Water Standards. One public drinking water well which is downgradient of the Site was closed due to taste and odor problems. The Site was placed on the Superfund NPL in September 1983.

On June 19, 1986, EPA and the Town entered into an Administrative Order on Consent (Index No. II CERCLA–60203). The Order required the Town to conduct a Remedial Investigation and Feasibility Study (RI/FS) at the Site with provisions for performing off-site investigations. EPA designated the on-property effort as Operable Unit 1 (OU1) and the off-site work as Operable Unit 2 (OU2). The Town later entered into a Consent Decree to conduct the OU1 remedial design, remedial construction, operation, maintenance, and the monitoring for the Site. EPA signed a Record of Decision (ROD) for OU1 on September 27, 1990, selecting the remedy for the Site as follows.

- Implementing New York State landfill closure requirements as specified in 6 NYCRR Part 360, solid waste management facilities regulations, which included construction of a geosynthetic membrane cap on the top surface of the landfill;
- Providing long-term air and groundwater quality monitoring;
- Monitoring and maintaining the passive gas-venting system installed under a previously implemented response action, including routine inspection and repairs;
- Establishing institutional controls in the form of deed restrictions on future uses of the landfill;
- Installing an additional passive gas-venting system, designed so that it can easily be converted to an active system should conversion become necessary; and
- Maintaining the existing boundary fence around the perimeter of the landfill property to continue to restrict access to the landfill.

In addition, because leachate indicator chemicals were identified in groundwater underneath and downgradient of the landfill, the ROD also specified that a supplemental remedial investigation be conducted to study the potential off-site impacts of the landfill, designated as OU2.

On-site construction commenced in November 1994 and was completed in November 1997. EPA conducted a final inspection with NYSDEC and the Town of Oyster Bay on November 5, 1997. In October 1999, EPA issued its approval of the Remedial Action Report. In addition, institutional controls, consisting of recording the Consent Decree and placing restrictive covenants on the real property at the site, have been implemented by the Town of Oyster Bay.

EPA approved a Post-Closure Monitoring and Maintenance Operations (O&M) Manual in December 2001. The O&M Manual provides for a long-term monitoring program for the cover system, the drainage system, and the groundwater and the gas-monitoring systems. The O&M Manual requires groundwater monitoring at selected wells. The first round of annual sampling was conducted in June 2003. The O&M monitoring results indicate that the remedial system as designed and constructed pursuant to the 1990 OU1 ROD is performing satisfactorily. A RI was performed for OU2 and concluded that the off-property groundwater does not pose a threat to public health or the environment. EPA

Region 2, issued a no further action ROD for OU2 in March 1996.

Hazardous substances remain at the Site above levels that would allow for unlimited use with unrestricted exposure. Pursuant to section 121(c) of CERCLA, EPA will review site remedies no less often than every five years. The EPA, Region 2, conducted a statutory Five-Year Review of the Site in November 2001. The Five-Year Review concluded that the contamination at the Syosset Landfill site is under control and there is no exposure to human or environmental receptors from Site-related contaminants. The next Five-Year Review will be completed by November 2006.

Public participation activities for this Site have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and section 117, 42 U.S.C. 9617. As part of the remedy selection process, the public was invited to comment on EPA's proposed remedies. All other documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories.

One of the three criteria for site deletion is when ''responsible parties or other persons have implemented all appropriate response actions required'' (40 CFR 300.425(e)(1)(i)). EPA, with the concurrence of the State of New York, through the NYSDEC, believe that this criterion for deletion has been met. Therefore, EPA is proposing deletion of this Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water Supply.

Dated: December 13, 2004.

George Pavlou,

Acting Regional Administrator, Region 2.

[FR Doc. 05–2709 Filed 2–14–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 70, No. 30
Tuesday, February 15, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Advisory Council on Historic Preservation; Notice of Meeting

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Friday, February 18, 2005. The meeting will be held in the Portola Room, Portola Plaza Hotel, 2 Portola Plaza, Monterey, California, beginning at 9 a.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Preserve America Community Recognition and Chairman's Awards Presentation
III. Preserve America Program Development
  A. Program Status Report
  B. Consideration of Preserve America Future Action Plan
  C. Review of Federal Agency Section 3 Reports
IV. California Heritage Tourism Issues
V. Report of the Executive Committee
  A. ACHP FY 2006 Budget Request
VI. Report of the Preservation Initiatives Committee
  A. Heritage Tourism Initiatives
  B. Historic Preservation Tax Issues
VII. Report of the Federal Agency Programs Committee
  A. Interstate Highway System Exemption
  B. U.S. Forest Service Off-Highway Vehicles Policy
  C. Nationwide Tribal Notification Strategy
VIII. Report of the Communications, Education, and Outreach Committee
  A. ACHP Strategies for Forming New Preserve America Alliances
IX. Consideration of Foreclosure of ACHP Comment by the Bureau of Indian Affairs, Route 4 Improvements, South Dakota
X. Report of the Archaeology Task Force
XI. Chairman's Report
  A. ACHP Alumni Foundation
  B. Legislative Issues
  1. ACHP Reauthorization
  C. Native American Advisory Group
XII. Executive Director's Report
  A. Staff Resources and Communications
XIII. New Business
  A. HUD Proposal for Affordable Housing Initiative
  B. 2005 ACHP Business Meeting Schedule
XIV. Adjourn

Note: The meeting of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 809, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #809, Washington, DC 20004.

Dated: February 10, 2005.

John M. Fowler,

Executive Director.

[FR Doc. 05–2914 Filed 2–14–05; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 10, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA__Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: Swine Health Protection.
OMB Control Number: 0579–0065.
Summary of Collection: Title 21, U.S.C. authorizes the Secretary and the Animal and Plant Health Inspection Service (APHIS) to prevent, control and

eliminate domestic diseases, as well as to take actions to prevent and manage exotic diseases such as hog cholera, foot-and-mouth disease, and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing APHIS ability to compete in the world market of animals and the trade of animal products. Because of serious threat to the U.S. swine industry, Congress passed Pub. L. 96–468 ''Swine Health Protection Act'' on October 17, 1980. This law requires USDA to ensure that all garbage is treated prior to its being fed to swine that are intended for interstate or foreign commerce or that substantially affect such commerce. Garbage is one of the primary media through which numerous infections or communicable diseases of swine are transmitted. The Act and the regulations will allow only operators of garbage treatment facilities, which meet certain specification to utilize garbage for swine feeding. APHIS will use various forms to collect information.

Need and Use of the Information: APHIS collects information from persons desiring to obtain a permit (license) to operate a facility to treat garbage. Prior to issuance of a license, an inspection will be made of the facility by an authorized representative to determine if it meets all requirements of the regulations. Periodic inspections will be made to determine if licenses are meeting the standards for operation of their approved facilities. Upon receipt of the information from the Public Health Officials, the information is used by Federal or State animal health personnel to determine whether the waste collector is feeding garbage to swine, whether it is being treated, and whether the feeder is licensed or needs to be licensed.

Description of Respondents: Farms; business or other for profit.

Number of Respondents: 347.

Frequency of Responses: Recordkeeping; reporting: on occasion.

Total Burden Hours: 1,493.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–2877 Filed 2–14–05; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–053N]

Codex Alimentarius Commission: Proposals for New Work and Priorities for the Codex ad hoc Intergovernmental Task Force on Foods Derived From Biotechnology

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Food and Drug Administration (FDA), United States Department of Health and Human Services, are sponsoring a public meeting on March 3, 2005, to provide information and receive public comments on new work and priorities for the ad hoc Intergovernmental Task Force on Food Derived from Biotechnology of the Codex Alimentarius Commission (Codex). Following approval at the 27th Session of the Codex Alimentarius Commission (June 28–July 3, 2004) to establish the Task Force, under the chairmanship of Japan, Codex agreed to solicit comments on the work that the Task Force should undertake and on the priorities for this new work.

DATES: The public meeting is scheduled for Thursday, March 3, 2005, from 2 p.m. to 5 p.m.

ADDRESSES: The public meeting will be held in Room 107–A of the Jamie L. Whitten Federal Building, 12th & Jefferson Drive, SW., Washington DC.

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102, Cotton Annex, Washington, DC 20730. All comments received must include the Agency name and docket number 04–053N.

All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2005 Notices Index/index.asp.*

For further information about the Codex ad hoc Intergovernmental Task Force on Food Derived from Biotechnology contact: Bernice Slutsky, Ph.D., Special Assistant to the Secretary for Biotechnology, Office of the Secretary, U.S. Department of Agriculture, 12th Street & Jefferson Drive, Washington, DC 20250. Phone: (202) 690–0735, e-mail: *Bernice.slutsky@usda.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Paulo Almeida, U.S. Codex Office, FSIS, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, phone: (202) 690–4042, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international standard-setting organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

The Codex ad hoc Intergovernmental Task Force on Foods Derived from Biotechnology develops standards, guidelines and recommendations for foods derived from modern biotechnology or for traits introduced into foods by modern biotechnology, on the basis of scientific evidence and risk analysis, having regard, where appropriate, to other legitimate factors relevant to the health of consumers and the promotion of fair practices in the food trade.

Public Meeting

At the March 3, 2005 public meeting, attendees will have the opportunity to pose questions and offer comments on work to be undertaken by the Codex ad hoc Task Force on Foods Derived from Biotechnology. Written comments may be offered at the meeting or sent to Dr. Bernice Slutsky (See **ADDRESSES**). Written comments should state that they relate to activities of the proposed ad hoc Codex Intergovernmental Task

Force for Foods Derived from Biotechnology.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done in Washington, DC on: February 8, 2005.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 05–2824 Filed 2–14–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 040408110–5026–02]

RIN 0607–AA42

2010 Census Redistricting Data Program Commencement of Phase 1: State Legislative District Project

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of program.

SUMMARY: This notice announces the commencement of Phase 1 of the 2010 Redistricting Data Program: The State Legislative District Project. This first phase specifically provides States the opportunity to provide their legislative districts (House and Senate) to the Bureau of the Census (Census Bureau) for the development of data products by legislative district. States may continue to update their legislative district plans with any changes during the decade as they currently do with changes to their U.S. Congressional plans.

DATES: Comments on this notice must be received by March 17, 2005. The deadline for States to notify the Census Bureau that they wish to participate in Phase 1: State Legislative District Project is August 1, 2005.

ADDRESSES: Please direct all written comments on this notice to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Catherine C. McCully, Chief of the Census Redistricting Data Office, U.S. Census Bureau, Room 3631, Federal Building 3, Washington, DC 20233, telephone (301) 763–4039.

SUPPLEMENTARY INFORMATION: Under the provisions of Public Law 94–171 (Title 13, United States Code (U.S.C.), Section 141(c)), the Director of the Census Bureau is required to provide the ''officers or public bodies with initial responsibility for legislative apportionment or districting of each state * * *'' with the opportunity to specify small geographic areas (for example, voting districts, wards, and election precincts) for which they wish to receive decennial census population totals for the purpose of reapportionment and redistricting.

By April 1 of the year following the decennial census, the Secretary is required to furnish the State officials or their designees with population counts for counties, cities, census blocks, and State-specified congressional districts, legislative districts, and voting districts that meet Census Bureau technical criteria.

In accordance with the provisions of Title 13, U.S.C. Section 141(c), and on behalf of the Secretary of Commerce, the Director announces the commencement of Phase 1 of the 2010 Census Redistricting Data Program. The purpose of this notice is to provide further information on the commencement of Phase 1 of the 2010 Census Redistricting Data Program, Phase 1—State Legislative District Project. Future notices will address the other phases of the 2010 Program.

The 2010 Census Redistricting Data Program was initially announced on May 13, 2004, in the **Federal Register** (69 FR 26547). The Census Bureau received and responded to two comments regarding the Redistricting Data Program. Both comments were concerned with the effect the census residence rules have on State legislative redistricting. In response, the Census Bureau explained that, while we work closely with the States to identify new construction; correct political boundaries; and add nonstandard features for use as block boundaries, our data tabulation programs consistently use the residence rules established for census collection and tabulation purposes.

Beginning in the winter of 2005, the Director of the Census Bureau will invite the Governor and the legislative leadership of the majority and minority parties in each State to designate a liaison to work with the Census Bureau on the 2010 Census Redistricting Data Program. In a separate letter, the Census Bureau will invite each State to participate in Phase 1, the State Legislative District Project. This phase will include a verification step and tabulations based on Census 2000 data. In addition, ongoing changes to Congressional district plans will be collected, and new tabulations will be developed, as needed. Boundaries of legislative and Congressional districts will be held as 2010 tabulation census block boundaries for those participating States. Participation in Phase 1 is not a prerequisite for participation in Phase 2 or 3 of the 2010 Census Redistricting Data Program. With the commencement of the American Community Survey (ACS), the Census Bureau will produce ACS data for States participating in Phase 1 on a flow basis. For the 2010 census, the ACS will replace the long form.

The deadline for each State to respond with intent to participate is August 1, 2005. The Census Bureau will work with each State or organize a kickoff meeting to ensure States are

well-informed on the benefits of working with the Census Bureau towards a successful 2010 census.

Executive Order 12866

This notice has been determined to be not significant under Executive Order 12866.

Dated: February 9, 2005.

Hermann Habermann,

Deputy Director and Chief Operating Officer, Bureau of the Census.

[FR Doc. 05–2876 Filed 2–14–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–863

Honey from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 15, 2005.

SUMMARY: On May 24, 2004, the Department of Commerce (the Department) initiated a new shipper review of the antidumping duty order on honey from the People's Republic of China (PRC) covering the period December 1, 2003, through May 31, 2004. This new shipper review covered one exporter, Foodworld International Club, Ltd. (Foodworld). For the reasons discussed below, we are rescinding the review of Foodworld.

FOR FURTHER INFORMATION CONTACT: Kristina Boughton, or Bobby Wong at (202) 482–8173 or (202) 482–0409, respectively; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2004, the Department received a timely request for a new shipper review of the antidumping duty order on honey from the PRC from Foodworld, an exporter of the subject merchandise sold to the United States. On August 5, 2004, the Department initiated a new shipper review of Foodworld under the antidumping duty order on honey from the PRC for the period December 1, 2003, through May 31, 2004. *See Honey From The People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 69 FR 47407. On August 24, 2004, the Department issued an antidumping duty questionnaire to Foodworld. Foodworld submitted its Section A response on October 4, 2004, its Section C response on October 8, 2004, and its Section D response on October 12, 2004. On December 22, 2004, the Department issued a supplemental questionnaire to Foodworld. On January 14, 2005, Foodworld submitted a letter informing the Department of its wish to withdraw from this new shipper review and asking the Department to terminate the review.

Scope of the Antidumping Duty Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Rescission of New Shipper Review

Pursuant to 19 CFR 351.214(f)(1), the Department may rescind a new shipper review if a party that requested a review withdraws its request not later than 60 days after the date of publication of notice of initiation of the requested review. Although Foodworld withdrew its request for a new shipper review on January 14, 2005, which is after the expiration of the 60–day deadline, the Department nevertheless has the discretion to extend the time period for withdrawal on a case–by-case basis. *See e.g., Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Seventh New Shipper Review*, 69 FR 22004 (April 23, 2004). We find it reasonable to extend the deadline for withdrawal in this case because we had not yet committed significant resources to this new shipper review. Specifically, we had not begun calculating an antidumping duty margin for Foodworld nor had we verified any of Foodworld's data. Furthermore, Foodworld was the only party to request a review, and we did not receive any submissions opposing Foodworld's withdrawal of its request for review. Finally, we note that our decision to rescind this new shipper review with respect to Foodworld would not prejudice any party to this proceeding, as Foodworld will continue to be included in the PRC–wide rate to which it was subject at the time it requested this review. For these reasons, we have accepted Foodworld's withdrawal and are rescinding the new shipper review of the antidumping duty order on honey from the PRC in accordance with 19 CFR 351.214(f)(1).

Cash Deposits

The Department will notify U.S. Customs and Border Protection (CBP) that bonding is no longer permitted to fulfill security requirements for shipments from Foodworld of honey from the PRC entered or withdrawn from warehouse for consumption in the United States on or after the publication of this notice of rescission of antidumping duty new shipper review in the **Federal Register**. Further, effective upon publication of this notice, for all shipments of the subject merchandise exported by Foodworld and entered or withdrawn from warehouse for consumption, the cash deposit rate will be the PRC–wide rate, which is 183.80 percent.

Notification to Interested Parties

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Parties Subject to Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351(f)(3).)

Dated: February 8, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–630 Filed 2–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–583–831

Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 9, 2004, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results and partial rescission of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan. This review covers 13 manufacturers/exporters. The period of review (POR) is July 1, 2002, through June 30, 2003.

We provided interested parties with an opportunity to comment on the preliminary results of review. After analyzing the comments received, we made changes to the margin calculations for two respondents, Chia Far Industry Factory Co., Ltd. (Chia Far) and Yieh United Steel Corporation (YUSCO). Therefore, the final results of review differ from the preliminary results of review. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 15, 2005.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge; or Karine Gziryan, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3518 or (202) 482–4081, respectively.

SUPPLEMENTARY INFORMATION:

Background

The following events occurred after the Department published the preliminary results of the instant administrative review in the **Federal Register**. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 48212 (August 9, 2004) (*Preliminary Results*). On November 8, 2004, the Department extended the time limit for completing the final results of review until February 5, 2004. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 69 FR 67312 (November 17, 2004). During September and December 2004, the Department received timely responses to several supplemental questionnaires (*see* Chia Far's September 2004 supplemental questionnaire response and Ta Chen Stainless Pipe Co., Ltd.'s (Ta Chen) September and December 2004 supplemental questionnaire response). During the period August 2004 through November 2004, the petitioners [1] and Ta Chen submitted comments to the Department regarding Ta Chen's claim that it did not export subject merchandise to the United States during the POR. On October 27, 2004, the Department placed on the record documents obtained from U.S. Customs and Border Protection (CBP) regarding certain U.S. entries of merchandise sold by Yieh Mau Corporation (Yieh Mau) during the POR. During October and November 2004, we conducted verifications of the sales and cost information provided by Chia Far and YUSCO. In response to the Department's invitation to comment on the *Preliminary Results*, the petitioners and Chia Far filed case briefs on December 16, 2004. The petitioners, Chia Far, YUSCO, and Ta Chen filed rebuttal briefs on December 21, 2004.

Period of Review

The POR is July 1, 2002, through June 30, 2003.

Scope of the Review

The products covered by the order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to the order is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[2], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Excluded from the scope of the order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

[1] Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC.

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of the order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [3]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [4]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of the order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[7]

Verification

As provided in section 782(I) of the Tariff Act of 1930, as amended (the Act), the Department conducted a verification of the sales and cost information provided by Chia Far and YUSCO. The Department conducted this verification using standard verification procedures including: on–site inspection of the manufacturers' facilities, examination of relevant sales, cost, production and financial records, and selection of relevant source documentation as exhibits. The Department's verification findings are identified in the sales and cost verification memoranda dated December 8, 2004, the public versions of which are on file in the Central Records Unit (CRU), room B099 of the main Commerce building.

[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[4] ''Gilphy 36'' is a trademark of Imphy, S.A.

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Partial Rescission of Review

We preliminarily rescinded the instant review with respect to Ta Chen, Chain Chon, Tung Mung, and China Steel because they reported that they made no shipments of subject merchandise during the POR. The Department reviewed CBP data, which supports the claims that these companies did not export subject merchandise during the POR. Moreover, documentation submitted by Ta Chen also demonstrates that it did not export subject merchandise during the POR (*see* Comment 1 of the accompanying *Issues and Decision Memorandum for the Final Results of the Fourth Antidumping Administrative Review of Stainless Steel Sheet and Strip in Coils from Taiwan* (*Issues and Decision Memorandum*) dated concurrently with this notice).

In the *Preliminary Results*, the Department assigned total adverse facts available to Yieh Mau because CBP data called into question the ''no shipment'' claim of Yieh Mau and the company failed to demonstrate that it did not sell subject merchandise to the United States during the POR. However, on August 2, 2004, after issuing the *Preliminary Results*, the Department received and examined entry packages from CBP, for the entries at issue. The entry documents support Yieh Mau's claim that it did not export subject merchandise to the United States during the POR. *See* Memorandum To The File, ''Import Documentation Obtained from U.S. Customs and Border Patrol for Entries of Merchandise Sold by Yieh Mau Corporation during the Period of Review,'' October 27, 2004, on file in room B–099 of the main Commerce building.

Therefore, in accordance with 19 CFR § 351.213(d)(3) and consistent with the Department's practice, we are rescinding this administrative review with respect to Yieh Mau, Ta Chen, Chain Chon, Tung Mung, and China Steel.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum* from Barbara E. Tillman, Acting Deputy

Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated February 7, 2005, which is hereby adopted by this notice. A list of the issues that parties have raised and to which we have responded, all of which are in the *Issues and Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review, and the corresponding recommendations, in this public memorandum that is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Sales Below Cost

We disregarded sales below cost for both YUSCO and Chia Far during the course of this administrative review.

Duty Absorption

In the *Preliminary Results*, the Department found that Chia Far absorbed antidumping duties on all U.S. sales made through its affiliated importer. Chia Far has failed to provide evidence that the unaffiliated customers in the United States will pay the full duty ultimately assessed on the subject merchandise. *See* Comment 8 of the *Issues and Decision Memorandum*. Thus, for the final results of this review, we continue to find that Chia Far absorbed antidumping duties.

Changes Since the Preliminary Results

Based on our analysis of comments received, we made changes to the margin calculations for Chia Far and YUSCO. The changes to the margin calculations are listed below:

• We used the borrowing cost of Chia Far's U.S. affiliated reseller to calculate U.S. credit expenses for all constructed export price sales (*see Issues and Decision Memorandum*, dated February 7, 2005, at Comment 6, and the Analysis Memorandum for Chia Far Industrial Factory Co., Ltd. for the Final Results of the Administrative Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Taiwan covering the period July 1, 2002 through June 30, 2003 (Chia Far's Final Analysis Memorandum), dated February 7, 2005).

• We revised the gauge code that was reported by Chia Far for one U.S. sale.

• We corrected the mis–allocated U.S. insurance, banking charges, and U.S. brokerage and handling fees that were reported by Chia Far for one U.S. sale.

For additional changes and corrections, see Chia Far's Final Analysis Memorandum and the Analysis Memorandum for Yieh United Steel Company Ltd. for the Final Results of the Administrative Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Taiwan covering the period July 1, 2002 through June 30, 2003, dated February 7, 2005.

Final Results of Review

We determine that the following weighted–average percentage margins exist for the period July 1, 2002, through June 30, 2003:

Manufacturer/Exporter/Reseller	Weighted–Average Margin (percentage)
Yieh United Steel Corporation (YUSCO)	1.92
Chia Far Industrial Factory Co., Ltd. (Chia Far)	1.10

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with section 351.212(b)(1) of the Department's regulations, we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. We will direct CBP to assess the resulting assessment rates against the reported entered customs' values for the subject merchandise on each of the importer's/customer's entries during the review period. For duty–assessment purposes, we have calculated importer/customer–specific assessment rates by dividing the dumping margins calculated for each importer/customer by the total entered value (or quantity if we do not have entered value) of sales for each importer/customer during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Chia Far and YUSCO will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value investigation, but the manufacturer is, the cash deposit rate

will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the ''all others'' rate, which is 12.61 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(I) of the Act.

Dated: February 7, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX I -- ISSUES IN THE ISSUES AND DECISION MEMORANDUM

A. Issue with Respect to Ta Chen

Comment 1: Whether Ta Chen Exported Subject Merchandise During the POR

B. Issues with Respect to Chia Far

Comment 2: Whether the Gauge for a U.S. Sale was Coded Correctly

Comment 3: Whether the Department Should Grant a CEP Offset

Comment 4: Whether Export Sales were Improperly Classified as Home Market Sales

Comment 5: Whether Order Confirmation Date is the Most Appropriate Date of Sale

Comment 6: Whether the Department Should Continue to Apply the Interest Rate Used for the Preliminary Results in Calculating Credit Expense on CEP sales

Comment 7: Whether the Department Should Make Changes to Certain U.S. Selling Expenses

Comment 8: Whether Chia Far Absorbed Antidumping Duties on All U.S. Sales Through Lucky Medsup

C. Issue with Respect to YUSCO

Comment 9: Whether the Department Should Reject YUSCO's Sales Data and Resort to Total Adverse Facts Available

[FR Doc. E5–631 Filed 2–14–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs From the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in the Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 15, 2005.

FOR FURTHER INFORMATION CONTACT: Stephen Berlinguette at (202) 482–3740, or Amber Musser at (202) 482–1777, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Extension of Time Limit

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department finds that it is not practicable to complete the preliminary results in the administrative review of folding metal tables and chairs from the PRC within this time limit. Specifically, due to resource constraints and the number of issues in this review, we find that additional time is needed in order to complete these preliminary results. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of this review until June 30, 2005.

Dated: February 9, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–629 Filed 2–14–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020805A]

Receipt of An Application for Direct Take Permit 1520

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce

ACTION: Notice of availability for public comment.

SUMMARY: NMFS has received an application from the Confederated Tribes of the Colville Reservation (CCT) for a direct take permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The duration of the proposed Permit is 5 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on the document. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments from interested parties on the Permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 pm Pacific standard time on March 17, 2005.

ADDRESSES: Written comments on the application should be sent to Kristine Petersen, Salmon Recovery Division, F/NWR1, 525 NE Oregon Street, Suite 510, Portland, OR 97232 or electronically to *kristine.petersen@noaa.gov*. Comments may also be sent via fax to (503)872–2737. The mailbox address for providing

e-mail comments is *Okanogan.nwr@noaa.gov*. Include in the subject line the following document identifier: ''Okanogan River monitoring''. Requests for copies of the permit application should be directed to the Salmon Recovery Division, F/NWR1, 525 NE Oregon Street, Suite 510, Portland, OR 97232. The documents are also available on the Internet at *www.nwr.noaa.gov/1srd*. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 230–5409.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen, Portland, OR (ph: (503) 230–5409, fax: (503) 872–2737, e-mail: *kristine.petersen@noaa.gov*).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species for scientific purposes or to enhance the propagation or survival of the species under section 10(a)(1)(A) of the ESA. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following evolutionarily significant units (ESUs) are included in the Permit application:

Steelhead (*Oncorhynchus mykiss*): endangered, naturally produced and artificially propagated Upper Columbia River (UCR).

Application Received

On January 18, 2005, the CCT submitted an application to NMFS for an ESA section 10(a)(1)(A) permit for the take of ESA-listed anadromous fish species associated with monitoring of salmon and steelhead in the Okanogan River, a tributary of the Columbia River in Washington.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(A) of the ESA. If it is determined that the requirements are met, a permit will be issued to the CCT for the monitoring actions in the Okanogan River. NMFS will publish a record of its final action in the **Federal Register**.

Dated: February 10, 2005.

Susan Pultz,

Acting Division Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–2900 Filed 2–14–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020305C]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for scientific research permits 1513, 1519, and 1521 and a request to modify permit 1322.

SUMMARY: Notice is hereby given that NMFS has received three scientific research permit applications and one modification request relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight-saving time on March 17, 2005.

ADDRESSES: Written comments on the application should be sent to Protected Resources Division, NMFS, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435 or by e-mail to *resapps.nwr@NOAA.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5435, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available at *http://www.nwr.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species and evolutionarily significant units (ESUs) are covered in this notice:

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River (SR).

Chinook salmon (*O. tshawytscha*): endangered naturally-produced and artificially propagated upper Columbia River (UCR); threatened naturally produced and artificially propagated SR spring/summer (spr/sum); threatened SR fall; threatened lower Columbia River (LCR); threatened upper Willamette River (UWR); threatened Puget Sound (PS).

Chum salmon (O. *keta*): threatened Columbia River (CR).

Steelhead (*O. mykiss*): threatened SR; threatened middle Columbia River (MCR); endangered UCR; threatened LCR; threatened UWR.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 et. seq) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA.

Application Received

Permit 1322 – Modification 3

NMFS' Northwest Fisheries Science Center (NWFSC) is asking to modify its 5–year permit to increase the annual number of listed fish taken in its research and to add take of juvenile UCR steelhead (natural and artificially propagated). The NWFSC is asking to increase its annual take of juvenile SR steelhead, LCR steelhead, MCR steelhead, UWR steelhead, and CR chum salmon while conducting research in the Columbia River estuary. The purposes of the research are to (1) determine the presence and abundance of fall and spring chinook salmon, coho salmon, and chum salmon in the estuary and lower Columbia River; (2) determine the relationship between juvenile salmon and lower Columbia River estuarine habitat; and (3) obtain information about flow change, sediment input, and habitat availability so they may develop a numerical model of the fishes' survival. The research would benefit listed salmonids by serving as a basis for estuarine restoration and preservation plans.

The NWFSC proposes to capture, handle, and release listed salmonids,

and while most of the fish would be unharmed, some would die during the course of the research and a small number of them would intentionally be killed. Purse seines, trapnets and beach seines would be used to capture the fish. Captured fish would be anesthetized, identified, sampled for tissues, and measured. Some fish would be sacrificed to confirm species identification, catch composition, food habits, and timing of estuarine entry.

Permit 1513

Washington Trout (WT) is requesting a 2–year research permit to annually capture, handle, and release juvenile PS chinook salmon. The research would take place in nearshore habitats of Admiralty Inlet, Washington. The purpose of the research is to determine habitat use by listed species in the nearshore waters of Admiralty Inlet. The WT intends to determine juvenile fish presence and abundance on a monthly basis in 2005 and 2006. The research would benefit listed chinook by determining which habitat types are used by juvenile chinook. The information gathered by this research would be used to design and prioritize habitat restoration and preservation projects. The WT proposes to capture the fish using beach seines. Captured fish would be identified, counted, checked for tags or marks, measured, and released. The WT does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 1519

The Columbia River Estuary Study Taskforce (CREST) is requesting a 5–year research permit to annually capture, handle, tag, and release juvenile SR sockeye salmon, SR fall chinook salmon, SR spring/summer chinook salmon, UCR chinook salmon, LCR chinook salmon, UWR chinook salmon, SR steelhead, UCR steelhead, MCR steelhead, LCR steelhead, UWR steelhead, and CR chum salmon. The research would take place in Grays Bay, Washington and Youngs Bay, Oregon in the Columbia River estuary. The purpose of the research is to evaluate estuarine habitat restoration efforts. Specific objectives are to (1) determine species composition, relative abundance, and residence time of various listed fish by using pre-restored and restoration project habitats and adjacent references sites; (2) determine prey utilization by juvenile salmon; and (3) determine prey availability. The research would benefit listed salmonids by determining how effectively currently altered habitats support salmonids and using that information to guide future habitat modifications.

The CREST proposes to capture the fish using fyke nets, trap nets, and beach seines. Most of the captured fish would be anesthetized, identified, counted, measured, weighed, checked for tags and marks, and released. Some of the fish would be tagged with passive integrated transponders, or injected with dye or visible implant elastomers. Fin or scale tissue samples for genetic or age analysis would be taken from a portion of the captured juvenile chinook salmon. Some of the captured juvenile salmonid would be sampled for stomach content. The CREST does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 1521

Wyllie-Echeverria Associates (WEA) is requesting a 2–year research permit to annually capture, handle, fin-clip, and release juvenile PS chinook salmon. The research would take place in nearshore habitats of Orcas and Waldron Islands, Washington. The purpose of the research is to determine which salmonid species and which chinook salmon stocks use the nearshore habitats of the islands. The WEA intends to determine juvenile fish presence and abundance on a monthly basis in 2005 and 2006. The research would benefit listed chinook by providing direct evidence of species- and stock-specific use of nearshore habitats. The information gathered by this research would be used to set priorities for protecting nearshore habitats. The WEA proposes to capture fish using beach seines, surface tow nets, and toss nets. Captured fish would be identified, counted, checked for tags or marks, measured, and released. Fin-clip samples would be collected for genetic analysis from a subsample of the captured fish. The WEA does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: February 8, 2005.

Susan Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–2901 Filed 2–14–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–172–000]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Tariff Filing

February 7, 2005.

Take notice that on February 1, 2005, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of March 3, 2005:

First Revised Sheet No. 87
Second Revised Sheet No. 88

MRT states that the filing seeks filed to change section 4 of MRT's tariff to establish gas quality specifications that are consistent with other pipelines in the industry and in MRT's geographical area.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–612 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–58–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

February 9, 2005.

Take notice that on January 26, 2005, CenterPoint Energy Gas Transmission Company (CenterPoint), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in the above referenced docket pursuant to section 7(c) of the Natural Gas Act (NGA), for a certificate of public convenience to construct, own and operate three additional vertical injection and withdrawal wells and construct and operate approximately 21 miles of 24-inch diameter pipeline, and appurtenances located in Oklahoma to enhance its Chiles Dome Storage Facility (Chiles Dome) located in Coal County, Oklahoma. CenterPoint also seeks authorization to convert 3 Bcf of cushion gas capacity to working gas capacity and increase the maximum withdrawal volume to 309 MMcf/day, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director, Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or call (318) 429–2804.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken; but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 2, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–622 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS04–200–000 and TS04–193–000]

CenterPoint Energy Gas Transmission Company; CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Filing

February 8, 2005.

On November 18, 2004, CenterPoint Energy Gas Transmission Company and CenterPoint Energy—Mississippi River Transmission Corporation filed a request for clarification of the Order No. 2004 Standards of Conduct to confirm that CenterPoint Energy Houston Electric, LLC is not an Energy or Marketing Affiliate of the CenterPoint Pipeline under the Standards of Conduct.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–624 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS05–10–000]

Cotton Valley Compression, L.L.C.; Notice of Filing

February 8, 2005.

Take notice that on January 19, 2005, Cotton Valley Compression, L.L.C. tendered for filing a request for a partial waiver or exemption from the requirements of Order No. 2004, FERC Stats. & Regs. ¶ 31,355 (2003), as well as a request for an extension of time.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–625 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–171–000]

East Tennessee Natural Gas, LLC; Notice of Proposed Changes in FERC Gas Tariff

February 7, 2005.

Take notice that on January 31, 2005, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 394, to be effective March 3, 2005.

East Tennessee states that the purpose of this filing is to update the list of non-conforming agreements contained in section 45 of the general terms and conditions of its FERC Gas Tariff to reflect the sale of all of Duke Energy North America's membership interests in Duke Energy Murray LLC to KGen Partners LLC on August 5, 2004, and the subsequent name change from Duke Energy Murray, LLC to KGen Murray I and II LLC.

East Tennessee states that copies of this filing have been served on all affected customers of East Tennessee and interested state commissions, as well as upon all parties on the Commission's official service list in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–611 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–016]

East Tennessee Natural Gas, LLC; Notice of Negotiated Rate

February 7, 2005.

Take notice that on February 1, 2005, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective on February 1, 2005:

Original Sheet No. 23
Sheet Nos. 24–100

East Tennessee states that this filing is being made in connection with a negotiated rate transaction pursuant to section 49 of the general terms and conditions of East Tennessee's FERC Gas Tariff. East Tennessee states that Original Sheet No. 23 identifies and describes the negotiated rate transaction, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract terms, and the contract quantity. East Tennessee also states that Original Sheet No. 23 includes footnotes where necessary to provide further details on the transaction listed thereon. Finally, East Tennessee filed a sheet

stating that Sheet Nos. 24–100 are reserved for future use.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–614 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS05–12–000]

Enbridge Offshore (Gas Transmission) L.L.C.; Notice of Filing

February 8, 2005.

On January 27, 2005, Enbridge Offshore (Gas Transmission) L.L.C. filed a request for a limited temporary exemption for the Standards of Conduct, on behalf of Garden Banks Gas Pipeline, LLC.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–626 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

UNITED STATES OF AMERICA

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

February 7, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands

b. *Project No:* 271–080 & –081

c. *Date Filed:* January 28, 2005

d. *Applicant:* Entergy Arkansas, Inc.

e. *Name of Project:* Carpenter-Remmel Project

f. *Location:* The Carpenter-Remmel Project is located on the Ouachita River in Garland and Hot Spring Counties, Arkansas. These two requests are located on Lake Hamilton and do not affect any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § § 791 (a) 825(r) and § § 799 and 801.

h. *Applicant Contact:* Mr. Bobby Pharr, Entergy, 141 West County Line Road, Malvern, AR, 72104, (501) 844–2121.

i. *FERC Contacts:* Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for Filing Comments and or Motions to Intervene:* February 25, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–271–080 &/or –081) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Entergy is seeking Commission approval to permit: (1) K&S Development to place two stationary uncovered boat docks (26 total slips), associated boardwalks, and boat ramp at the Lighthouse Pont condominium development on Lake Hamilton (P–271–080); and (2) Larry Diggs to place 1 stationary covered boat dock (10-slips) adjacent to his existing boat storage business (P–271–081).

l. *Location of the Application:* The filing is available for review at the

Commission in the Public Reference Room , located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online support at *FERCOnLineSupport@ferc.gov* or toll free (866) 208 3676 or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–609 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–64–000]

Florida Gas Transmission Company; Notice of Application

February 7, 2005.

Take notice that on February 1, 2005, Florida Gas Transmission Company (FGT), 1331 Lamar Street, Suite 650, Houston, Texas 77010, filed in Docket No. CP05–64–000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act (NGA) and the Commission's Regulations, for permission and approval to abandon certain facilities and authorization to construct, own, and operate facilities consisting of a new electric driven compressor station and appurtenant facilities located in Miami-Dade County, Florida, as more fully set forth in the application which is open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

FGT proposes to construct a new 17,000 horsepower electric compressor station and approximately 1,600 feet of 18-inch mainline extension. FGT states that the proposed facilities also include a 24-inch Tee and Side Valve on its existing 24-inch turkey point lateral and electronic flow measurement at a new meter station to be constructed by Florida Power & Light Company (FPL). FGT also states that it has entered into a facility operation and maintenance reimbursement agreement with FPL in which FPL agrees to reimburse FGT for the costs of the proposed facilities, including the ongoing operation and maintenance costs.

Any questions regarding this application should be directed to Stephen T. Veatch, Sr. Director, Certificates and Regulatory Reporting, Florida Gas Transmission Company (FGT), 1331 Lamar Street, Suite 650, Houston, Texas 77010, or via telephone at (713) 853–6549.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: February 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–615 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–106]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

February 7, 2005.

Take notice that on February 1, 2005, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet No. 26D.06, to become effective April 1, 2005.

Natural states that the purpose of this filing is to implement two agreements that are both negotiated rate transactions.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–606 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS05–8–000]

SG Resources Mississippi, L.L.C.; Notice of Filing

February 8, 2005.

Take notice that on January 5, 2005, SG Resources Mississippi, L.L.C. tendered for filing a request for an exemption from the Standards of Conduct pursuant to 18 CFR 385.3(a).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–627 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS05–9–000]

Texas Gas Service Company, a Division of ONEOK, Inc.; Notice of Filing

February 8, 2005.

Take notice that on January 6, 2005, Texas Gas Service Company, a division of ONEOK, Inc. (TGS) filed a motion requesting an exemption and waiver from the requirements of Order No. 2004, FERC Stats. & Regs. ¶ 31,355 (2003).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–621 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–173–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 7, 2005.

Take notice that on February 2, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty Ninth Revised Sheet No. 28, to become effective February 1, 2005.

Transco states that the proposed changes would reflect a decrease in the rate schedule S–2 demand charge from $0.1580 to $0.1576, withdrawal charge from $0.0541 to $0.0534 and demand charge adjustment from $0.3819 to $0.3811.

Transco indicates that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission, LP under its rate schedule X–28, the costs of which are included in the rates and charges payable under Transco's rate schedule S–2.

Transco states that this filing is being made pursuant to tracking provisions under section 26 of the general terms and conditions of Transco's Third Revised Volume No.1 Tariff. Transco also states that included in Appendix A, attached to the filing is the explanation of the rate changes and details regarding the computation of the revised S–2 rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–613 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–320–000]

Unitil Energy Systems, Inc.; Notice of Issuance of Order

February 7, 2005.

Unitil Energy Systems, Inc. (UES) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of energy, capacity and ancillary services at market-based rates. UES also requested waiver of various Commission regulations. In particular, UES requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by UES.

On February 2, 2005, the Commission granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by UES should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is March 4, 2005.

Absent a request to be heard in opposition by the deadline above, UES is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of UES, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of UES's issuances of securities or assumptions of liability.

Copies of the full text of the Commission's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and

interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–607 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2398–006, et al.]

Baconton Power, LLC, et al.; Electric Rate and Corporate Filings

February 8, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Baconton Power LLC

[Docket No. ER00–2398–006]

Take notice that on February 2, 2005, Baconton Power LLC filed a notice of change in status relating to the facts relied upon by the Commission in approving its application to charge market-based rates for wholesale sales.

Comment Date: 5 p.m. Eastern Time on February 23, 2004.

2. Colton Power, L.P.

[Docket No. ER01–2644–006]

Take notice that on February 1, 2005, Colton Power, L.P. (Colton) tendered for filing an updated market power analysis and notice of change in status in compliance with the Commission order authorizing Colton to engage in wholesale sales of electric power at market-based rates issued January 30, 2002 in Docket No. ER01–2644–000, *et al.*, 98 FERC ¶ 61,059.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

3. Duke Energy Lee, LLC

[Docket No. ER04–641–003]

Take notice that on February 1, 2005, Duke Energy Lee, LLC (Duke Lee) submitted its compliance filing in response to the Commission's order issued January 25, 2005 in Docket Nos. ER05–641–000, 001 and 002, *Duke Energy Lee, LLC,* 110 FERC ¶ 61,057 (2005)

Duke Lee states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

4. NorthWestern Energy

[Docket No. ER04–1106–002]

Take notice that on February 2, 2005, NorthWestern Energy filed to withdraw the tariff sheets submitted August 9, 2004, as amended on November 3, 2004, containing a proposed modification to Schedule 4 (Energy Imbalance Service) and a new Schedule 9 (Generation Imbalance Service), and renewed its request for acceptance and approval of proposed Attachment J which contains the Large Generator Interconnection Agreement and the Large Generator Interconnection Procedures.

Comment Date: 5 p.m. Eastern Time on February 23, 2005.

5. Old Dominion Electric Cooperative

[Docket No. ER05–309–001]

Take notice that on February 4, 2005, Old Dominion Electric Cooperative (Old Dominion) in response to the Commission's deficiency letter order issued January 27, 2005, filed an amendment to its December 7, 2004 filing in Docket No. ER05–309–000

Old Dominion states that a copy of the filing was served upon each of Old Dominion's member cooperatives, the public service commissions in the Commonwealth of Virginia and the states of Delaware, Maryland and West Virginia, and Bear Island Paper Company, LLC.

Comment Date: 5 p.m. Eastern Time on February 14, 2005.

6. ISO New England Inc.; Bangor Hydro-Electric Company; Central Maine Power Company; NSTAR Electric & Gas Corporation, on behalf of its affiliates: Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company, and Canal Electric Company; New England Power Company; Northeast Utilities Service Company, on behalf of its operating company affiliates: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire and Holyoke Water Power Company; The United Illuminating Company; Fitchburg Gas and Electric Light Company; Unitil Energy Systems, Inc.; Vermont Electric Power Company; Central Vermont Public Service Corporation; Green Mountain Power Corporation; Vermont Electric Cooperative; Florida Power & Light Company—New England Division

[Docket No. ER05–374–002]

Take notice that, on January 28, 2005, ISO New England Inc. (ISO–NE) submitted a compliance filing pursuant to the Commission's order issued December 30, 2004 in Docket No. ER05–135–000. ISO–NE states that the filing amends section IV.B.6 of ISO–NE's Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 to state that all quarterly and annual capital budget and expenditure filings will be filed pursuant to, and subject to Commission review under, section 205 of the Federal Power Act.

ISO–NE states that copies of the filing were served on parties on the official service list in the above-captioned proceeding, as well as to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: 5 p.m. Eastern Time on February 18, 2005.

7. ISO New England Inc.; Bangor Hydro-Electric Company; Central Maine Power Company; NSTAR Electric & Gas Corporation, on behalf of its affiliates: Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company, and Canal Electric Company; New England Power Company; Northeast Utilities Service Company, on behalf of its operating company affiliates: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire and Holyoke Water Power Company; The United Illuminating Company; Fitchburg Gas and Electric Light Company; Unitil Energy Systems, Inc.; Vermont Electric Power Company; Central Vermont Public Service Corporation; Green Mountain Power Corporation; Vermont Electric Cooperative; Florida Power & Light Company—New England Division

[Docket No. ER05–374–003]

Take notice that, on January 28, 2005, ISO New England Inc. (ISO–NE) submitted a compliance filing pursuant to the Commission's order issued December 30, 2004 in Docket No. ER05–134–000 to remove Schedule 5 from Section IV.A of ISO–NE's Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3. ISO–NE states that Schedule 5 would have served as a placeholder to allow a Regional State Committee to submit, justify, and collect its administrative costs should such a committee be formed in the context of the regional transmission organization.

ISO–NE states that copies of the filing were served on parties on the official service list in the above-captioned proceeding, as well as the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: 5 p.m. Eastern Time on February 18, 2005.

8. Eastern Desert Power LLC

[Docket No. ER05–534–000]

Take notice that on February 1, 2005, Eastern Desert Power LLC (Eastern Desert) submitted an application for authorization to sell energy, capacity and ancillary services at market-based rates. Eastern Desert states that it is developing and will own and operate an approximately 51-megawatt wind energy facility (the Facility) in San Bernardino County, California. Eastern Desert requests that the Commission grant waivers and blanket approvals provided to applicants that receive authority for market-based rates.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

9. Xcel Energy Services Inc.

[Docket No. ER05–535–000]

Take notice that on February 1, 2005, Xcel Energy Services Inc. (XES), on behalf of the Xcel Energy Operating Companies (Northern States Power Company, Northern States Power Company (Wisconsin), Public Service Company of Colorado, and Southwestern Public Service Company), submitted revised tariff sheets to the Xcel Energy Operating Companies open-access transmission tariff (Xcel Energy OATT). XES states that the purpose of this filing is to remove Cheyenne Light, Fuel and Power Company as one of the Xcel Energy Operating Companies offering transmission service under the Xcel Energy OATT.

XEL states that copies of the filing were served upon XES's state public service commissions. XES requests waiver of further service requirements as no third party has taken service under this tariff on the facilities of Cheyenne Light, Fuel and Power Company.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

10. AEP Texas Central Company

[Docket No. ER05–536–000]

Take notice that on February 2, 2005, American Electric Power Service Corporation (AEPSC), as agent for AEP Texas Central Company (AEPTCC) formerly called Central Power and Light Company, submitted for filing an interconnection agreement between AEPTCC and LCRA Transmission Services Corporation (LCRA). AEPTCC requests an effective date of January 11, 2005.

AEPSC states that it has served copies of the filing on LCRA and the Public Utility Commission of Texas.

Comment Date: 5 p.m. Eastern Time on February 23, 2005.

11. PacifiCorp

[Docket No. ER05–537–000]

Take notice that on February 2, 2005, PacifiCorp tendered for filing Amendment No. 3 to the June 1, 1994 AC Intertie Agreement between PacifiCorp and Bonneville Power Administration (PacifiCorp's First Revised Rate Schedule FERC No 368).

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and Bonneville Power Administration.

Comment Date: 5 p.m. Eastern Time on February 23, 2005.

12. PSI Energy, Inc., Northern Indiana Public Service Company

[Docket No. ER05–538–000]

Take notice that on February 2, 2005, PSI Energy, Inc. (PSI) and Northern Indiana Public Service Company (NIPSCO) tendered for filing an Amended and Restated Facilities Agreement between PSI and NIPSCO. PSI and NIPSCO request an effective date of May 18, 2004.

PSI and NIPSCO state that copies of this filing have been served on the Indiana Utility Regulatory Commission.

Comment Date: 5 p.m. Eastern Time on February 23, 2005.

13. PacifiCorp

[Docket No. ER05–539–000]

Take notice that on February 3, 2005, PacifiCorp tendered for filing Order 2003–B revisions to its open access transmission tariff (OATT). PacifiCorp states that these revisions change portions of the *pro forma* Large Generator Interconnection Procedures and Large Generator Interconnection Agreement in PacifiCorp's OATT. PacifiCorp requests an effective date of January 19, 2005.

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission. In addition, PacifiCorp's existing transmission customers were notified by e-mail.

Comment Date: 5 p.m. Eastern Time on February 24, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–632 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–15–000]

Caledonia Energy Partners, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Caledonia Storage Project

February 9, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Caledonia Energy Partners, L.L.C. (Caledonia) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed underground natural gas storage facility and related appurtenant facilities in Lowdnes County, Mississippi, including:

- Eight new injection/withdrawal storage wells;
- Three, 3,550-horsepower gas engine compressor units and ancillary facilities at a new compressor facility site;
- About 0.32 mile of small diameter well interconnect pipeline;
- About 0.85 mile of 24-inch-diameter pipeline to connect the wells to the compressor facility; and
- About 0.87 mile of 24-inch-diameter pipeline to connect the compressor facility to Tennessee Gas Pipeline Company's interstate pipeline system.

The purpose of the proposed facilities would be to convert a nearly depleted natural gas reservoir, known as the Caledonia Field, into a high-deliverability, multi-cycle gas storage field capable of storing 11.7 billion cubic feet of working gas with an initial maximum withdrawal capacity of 330 million cubic feet per day (MMcf/d), and a maximum injection capability of 260 MMcf/d. Caledonia states the project would help meet the rising demand for gas storage in North America and serve local distribution company markets, gas fired electric generation markets, and liquefied natural gas markets that require high-cycling capability.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to interested state agencies and individuals, two United States congressmen, a Mississippi State representative, a local newspaper, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 3, PJ11.3;
- Reference Docket No. CP05–15–000; and
- Mail your comments so that they will be received in Washington, DC on or before March 11, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet website (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–628 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 632–009 Utah]

Lower Monroe, Monroe City; Notice of Availability of Final Environmental Assessment

February 8, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a subsequent license for the Lower Monroe Hydroelectric Project, and has prepared an Environmental Assessment (EA). The operating project is located on Monroe Creek, 2 miles east of Monroe City, Sevier County, Utah. The project affects about 1.36 acres of federal lands within the Fishlake National Forest. The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

For further information, contact Gaylord Hoisington at (202) 502–6032.

Magalie R. Salas,

Secretary.

[FR Doc. E5–617 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Approval of Financing Arrangement and Soliciting Comments, Motions To Intervene, and Protests

February 7, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of license and approval of financing arrangement.

b. *Project No.:* 1855–030.

c. *Date Filed:* January 26, 2005.

d. *Applicants:* USGen New England, Inc. (USGenNE); Town of Rockingham, Vermont (Town); Bellows Falls Power Company, LLC (BFPC); and Vermont Hydro-Electric Power Authority (VHPA).

e. *Name and Location of Project:* Bellows Falls, P–1855: Connecticut River in Windham and Windsor Counties, Vermont and Cheshire and Sullivan Counties, New Hampshire.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicants Contacts:* For USGenNE: William J. Madden, Jr., John A. Whittaker, IV, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, (202) 371–5700. For the Town: Richard Saudek, Cheney, Brock & Saudek, P.O. Box 489, Montpelier, VT 05601, (802) 223–4000. For BFPC: Amy S. Koch, Jennifer Lokenvitz Schwitzer, Patton Boggs LLP, 2550 M Street, NW., Washington, DC 20037, (202) 457–5618. For VHPA: Molly K. Lebowitz, Esq., Dinse, Knapp & McAndrew, P.C., 209 Battery Street, P.O. Box 988, Burlington, VT 05402–0988, (802) 864–5751.

h. *FERC Contact:* James Hunter at (202) 502–6086.

i. *Deadline for Filing Comments, Protests, and Motions To Intervene:* March 8, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The Applicants seek Commission approval to transfer the license for the Bellows Falls Project from USGenNE to the Town and BFPC as co-licensees and for approval of a financing plan under Standard Article 5 whereby VHPA would, at closing, take title to project property and transfer it to the Town. This transfer is requested as an alternative, for this project only, to the transfer from USGenNE to TransCanada Hydro Northeast Inc. of this project and four others that was approved by order issued on January 24, 2005, but not yet consummated.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number (P–1855) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–608 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 7, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Increase its Authorized Generating Capacity.

b. *Project No.:* 2725–068.

c. *Date Filed:* January 24, 2005.

d. *Applicant:* Oglethorpe Power Corporation and Georgia Power Company.

e. *Name of Project:* Rocky Mountain Hydroelectric Plant.

f. *Location:* The project is located on the Heath Creek in Floyd County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. James A. Messersmith, Oglethorpe Power Corporation, 2100 East Exchange Place, Tucker, GA 30084–5336.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Hong Tung at (202) 502–8757, or e-mail address: *hong.tung@ferc.gov.*

j. *Deadline for filing comments and/or motions:* March 8, 2005.

k. *Description of Request:* The licensees propose to replace the existing pump-turbine runners and possibly modify pump-turbine, motor-generator,

and auxiliary equipment components. The purpose of these modifications would be to optimize the hydraulic performance and increase the maximum operating capacity of the equipment, thereby increasing its maximum hydraulic capacity at peak generation by 20 to 25 percent and its firm peak generating capacity by 202 MW.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–610 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 8, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2107–016.

c. *Date Filed:* December 16, 2003.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Poe Hydroelectric Project.

f. *Location:* On the North Fork Feather River in Butte County, near Pulga, California. The project includes 144 acres of lands of the Plumas National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Tom Jereb, Project Manager, Pacific Gas and Electric Company, P.O. Box 770000, N11D, San Francisco, California 94177, (415) 973–9320.

i. *FERC Contact:* John Mudre, (202) 502–8902 or *john.mudre@ferc.gov*.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The project consists of: (1) The 400-foot-long, 60-foot-tall Poe Diversion Dam, including four 50-foot-wide by 41-foot-high radial flood gates, a 20-foot-wide by 7-foot-high small radial gate, and a small skimmer gate that is no longer used; (2) the 53-acre Poe Reservoir; (3) a concrete intake structure located on the shore of Poe Reservoir; (4) a pressure tunnel about 19 feet in diameter with a total length of about 33,000 feet; (5) a differential surge chamber located near the downstream end of the tunnel; (6) a steel underground penstock about 1,000 feet in length and about 14 feet in diameter; (7) a reinforced concrete powerhouse, 175-feet-long by 114-feet-wide, with two vertical-shaft Francis-type turbines rated at 76,000 horsepower connected to vertical-shaft synchronous generators rated at 79,350 kVA with a total installed capacity of 143 MW and an average annual generation of 584 gigawatt hours; (8) the 370-foot-long, 61-foot tall, concrete gravity Big Bend Dam; (9) the 42-acre Poe Afterbay Reservoir; and (10) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All such filings must: (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E5–618 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–52–000]

ISO New England, Inc. and New England Power Pool; Notice of Staff Technical Conference

February 8, 2005.

On December 13, 2004, a data request was issued directing the New England Power Pool and ISO New England, Inc., to provide additional information regarding the data used to develop the Hydro Quebec Interconnection Capacity Credit values for the 2005/2006 Power Year. *See* New England Power Pool Letter Order issued in Docket No. ER05–52–000 on December 13, 2004.

On January 12, 2005, New England Power Pool and ISO New England, Inc., filed a request for a technical session so that interested stakeholders may discuss their concerns with Staff regarding the establishment of Hydro Quebec Capacity Credit values. Take notice that a Staff technical conference on the determination of Hydro Quebec Interconnection Capacity Credit values will be held for one day, on Monday February 14, 2005, at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested persons are permitted to attend. Additionally, all interested persons who wish to monitor the technical conference by telephone must contact Valerie Martin, either by e-mail at *valerie.martin@ferc.gov* or by telephone at (202) 502–6139 no later than 5 p.m. Thursday February 10, 2005, stating your name, the name of the entity you represent, and an e-mail address or telephone number where you can be reached.

The technical conference telephone number and other information will be provided to those submitting requests to monitor the conference, preferably by return e-mail.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–623 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–523–000]

Southern Natural Gas Company; Notice of Informal Settlement Conference

February 8, 2005.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. (e.s.t.) on Wednesday, February 23, 2005, in a room to be designated at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Bob Keegan at (202) 502–8158, *James.Keegan@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–616 Filed 2–14–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2005–0017, FRL–7873–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Emission Standards for Hazardous Air Pollutants (NESHAPs): Radionuclides, EPA ICR Number 1100.12, OMB Control Number 2060–0191

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 25, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 18, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2005–0017, to EPA online using EDOCKET (our preferred method), *Air and Radiation.Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, *http://www.epa.gov/oar/docket.html*, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Eleanor Thornton-Jones, Radiation Protection Division, Center for the

Waste Management, Office of Radiation and Indoor Air, Mail Code: 6608J; Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9773; fax number: (202) 343–2306; email address: *thornton.eleanord@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2005–0017, which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Affected entities: Entities affected by this action are those which own or operate Department of Energy (DOE) facilities, elemental phosphorus plants, Non-DOE federal facilities and phosphogypsum stacks, underground uranium mines and uranium mill tailings piles.

Title: National Emission Standards for Hazardous Air Pollutants: Radionuclides, OMB No. 2060–0191, expiring 8/25/05.

Abstract: On December 15, 1989 pursuant to section 112 of the Clean Air Act as amended in 1977 (42 U.S.C. 1857), EPA promulgated NESHAPs to control radionuclide emissions from several source categories. The regulations were published in 54 FR 51653, and are codified at 40 CFR part 61, subparts B, H, I, K, R, T, and W. Information is being collected pursuant to Federal regulation 40 CFR 61. The pertinent sections of the regulation for reporting and record keeping are listed below for each source category:

Department of Energy Facilities—Sections 61.93, 61.94, 61.95
Elemental Phosphorous—Sections 61.123, 61.124, 61.126
Non-DOE Federal Facilities—Sections 61.103, 61.104, 61.105, 61.107
Phosphogypsum Stacks—Sections 61.203, 61.206, 61.207, 61.208, 61.209
Underground Uranium Mines—Sections 61.24, 61.25
Uranium Mill Tailings Piles—Sections 61.223, 61.224, 61.253, 61.254, 61.255

Data and information collected is used by EPA to ensure that public health continues to be protected from the hazards of airborne radionuclides by compliance with NESHAPs. If the information were not collected, it is unlikely that potential violations of the standards would be identified and corrective action would be initiated to bring the facilities back into compliance. Compliance is demonstrated through emission testing and/or dose calculation. Results are submitted to EPA annually for verification of compliance and maintained for a period of 5 years. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9, and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The estimated burden for each respondent is 32 hours per response. This estimate is based on experience gained in preparing radionuclide NESHAPs enforcement and compliance guidance material and in demonstrating the use of EPA's COMPLY computer program to the uninitiated.

Respondent	Number of facilities
Department of Energy	42
Elemental Phosphorus	2
Non-DOE not licensed by NRC	20
Phosphogypsum Stacks	35
Underground Uranium Mines	7
Uranium Mill Tailings Piles (Subparts T and W)	13
Total	124

It is estimated that 124 facilities would be required to report emissions and/or effective dose equivalent annually and retain supporting records for five years. The total record keeping and reporting burden hours is 288 hours times 124 respondents = 35,712 hours. The estimated annualized capital/start up costs are: $45,000 and the annual operation and maintenance costs are $1,581,120.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 8, 2005.

Bonnie C. Gitlin,

Acting Director, Radiation Protection Division, Office of Radiation and Indoor Air.

[FR Doc. 05–2894 Filed 2–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CA 313–0476; FRL–7872–9]

Adequacy Status of the San Joaquin Valley Unified Air Pollution Control District, California, Submitted Ozone Attainment Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets contained in the submitted 2004 State Implementation Plan for Ozone in the San Joaquin Valley are adequate for transportation conformity purposes.

As a result of our finding, the various transportation planning agencies in the San Joaquin Valley and the Federal Highway Administration must use the VOC and NO_X motor vehicle emissions budgets from the submitted 2004 State Implementation Plan for Ozone in the San Joaquin Valley for future conformity determinations.

DATES: This determination is effective March 2, 2005.

FOR FURTHER INFORMATION CONTACT: The finding is available at EPA's conformity Web site: *http://www.epa.gov/oms/transp/traqconf.htm* (once there, click on the ''Transportation Conformity'' link, then look for ''Adequacy Web Pages'').

You may also contact David Wampler, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 972–3975, or *wampler.david@epa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces our finding that the emissions budgets contained in the 2004 State Implementation Plan [1] for Ozone in the San Joaquin Valley (''Ozone Plan''), submitted by the State of California on behalf of the San Joaquin Valley Unified Air Pollution Control District on November 15, 2004, are adequate for transportation conformity purposes. EPA Region IX made this finding in a letter to the State of California, Air Resources Board on February 7, 2005. We are also announcing this finding on our conformity Web site: *http://www.epa.gov/oms/transp/traqconf.htm* (once there, click on the ''Transportation Conformity'' link, then look for ''Adequacy Web Pages'').

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). One of these criteria is that the motor vehicle emissions budgets, when considered together with all other emission sources, is consistent with applicable requirements for the reasonable further progress plan. We have preliminarily determined that the 2004 State Implementation Plan for Ozone in the San Joaquin Valley plan meets the necessary rate of progress reductions for milestone years 2008 and 2010 and demonstrates attainment by no later than 2010. Therefore, the motor vehicle emissions budgets can be found adequate. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the submitted plan itself. Even if we find a budget adequate, the submitted plan could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). This guidance is now reflected in the amended transportation conformity rule, July 1, 2004 (69 FR 40004), and in the correction notice, July 20, 2004 (69 FR 43325). We followed this process in making our adequacy determination on the motor vehicle emissions budgets contained in the 2004 State Implementation Plan for Ozone in the San Joaquin Valley.

[1] The submitted Ozone Plan includes a rate-of-progress demonstration for milestone years 2008 and 2010 and a demonstration that the San Joaquin Valley will attain by no later than the 2010 attainment date for areas classified ''extreme'' under the federal 1-hour ozone standard.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 8, 2005.

Karen Schwinn,

Acting Regional Administrator, Region IX.

[FR Doc. 05–2890 Filed 2–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7873–6]

Science Advisory Board Staff Office; Request for Nominations for the Science Advisory Board's Consultation on EPA's Framework for Revising the Aquatic Life Criteria Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting nominations to augment expertise on the SAB Ecological Processes and Effects Committee for a panel to provide consultation to EPA on the framework for revising the Aquatic Life Criteria Guidelines.

DATES: Nominations should be submitted by March 1, 2005 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), via telephone/voice mail at (202) 343–9995; via e-mail at *armitage.thomas@epa.gov*; or at the U.S. EPA Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: EPA's recommended ambient water quality criteria for aquatic life provide guidance to states and tribes for adopting water quality standards which are the basis for controlling discharges or releases of pollutants. Currently, ambient water quality criteria for aquatic life protection are derived according to the Guidelines for Derivation of Ambient Water Quality Criteria for the Protection of Aquatic Life and Their Uses, published in 1985. To ensure that ambient water quality criteria are derived from the best available science, EPA's Office of Water assessed the need to update the Guidelines and identified issues that should be addressed in the

revisions. EPA briefed the SAB Ecological Processes and Effects Committee about this effort in December 2002, and the Committee supported EPA's assessment of the need to update the Guidelines as well as the issues EPA identified to address. To achieve the goal of revising the Guidelines EPA has formed an interagency workgroup, the Aquatic Life Criteria Guidelines Committee, as the technical body to review the state-of-the-science and recommend new or improved approaches for deriving ambient water quality criteria. EPA's Office of Water has therefore requested a consultation with the SAB on a proposed framework for revising the Guidelines.

The Science Advisory Board is a chartered Federal advisory committee established under 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The panel being formed will provide advice to the EPA through the Chartered SAB. The Panel will comply with the provisions of the Federal Advisory Committee Act and all appropriate SAB procedural policies, including the SAB process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board, which can be found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ec0210.pdf.* The work of this panel includes reviewing background material, and participating in a one-day face-to-face meeting for the consultation.

Tentative Charge to the Panel: EPA's Office of Water seeks the opportunity for a consultation with the SAB to receive comments on the Agency's proposed framework for revising the Aquatic Life Criteria Guidelines. EPA is seeking advice and recommendations on: (1) The general scope of the proposed framework; (2) the suitability of the preliminary scientific approaches, methods and models identified to be incorporated into the revised Guidelines; (3) additional or alternative approaches, methods, and models that should be considered; and (4) additional scientific issues and/or revisions that should be considered.

Request for Nominations: The SAB Staff Office is requesting nominations to augment expertise on the SAB Ecological Processes and Effects Committee to form an SAB panel for a consultation on the framework for revising the Aquatic Life Criteria Guidelines. To augment expertise on the Ecological Processes and Effects Committee, the SAB Staff Office is seeking individuals who have expertise in one or more of the following areas: (a) Aquatic toxicology, particularly kinetic toxicity modeling and tissue residue-based toxicity data and residue-response relationships; (b) biology of aquatic and benthic species; (c) bioaccumulation modeling, including both simple bioaccumulation factors (bioaccumulation factors and biota-sediment accumulation factors) and complex dynamic food web/chain models; and (d) population modeling.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate individuals qualified in the areas of expertise described above to serve on the Subcommittee. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB Web site at: *http://www.epa.gov/sab.* The form can be accessed through a link on the blue navigational bar on the SAB Web site. To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations using this form, and any questions concerning any aspects of the nomination process may contact the DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than March 1, 2005. Any questions concerning either this process or any other aspects of this notice should be directed to the DFO.

The SAB will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the ''Widecast''), SAB Staff will develop a smaller subset (known as the ''Short List'') for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 14 calendar days. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for the Panel.

For the SAB, a balanced review panel (*i.e.,* committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by SAB Staff independently of the background of each candidate (*e.g.,* financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will also be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

In addition to reviewing background material, Panel members will be asked to attend one public face-to-face meeting over the anticipated course of the advisory activity.

Dated: February 7, 2005.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–2893 Filed 2–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7873–2]

National Advisory Council for Environmental Policy and Technology, Environmental Technologies Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Environmental Technologies Subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy, technology, and management issues. The Environmental Technologies Subcommittee was formed to assist EPA in evaluating its current and potential role in the development and commercialization of environmental technologies by suggesting how to optimize existing EPA programs to facilitate the development of sustainable private sector technologies, and by suggesting alternative approaches to achieving these goals. The purpose of the meeting is to continue the Subcommittee's consideration of these issues.

DATES: The NACEPT Environmental Technologies Subcommittee will hold a two day public meeting on Thursday, March 3, from 9 a.m. to 5 p.m. and Friday, March 4, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Hilton Old Town Alexandria, 1767 King Street, Alexandria, Virginia. The meeting is open to the public, with limited seating on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Council should be sent to Mark Joyce, Designated Federal Officer, at the contact information below. The public is welcome to attend all portions of the meeting.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, *joyce.mark@epa.gov*, 202–233–0068, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Mark Joyce at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: February 9, 2005.

Sonia Altieri,

Designated Federal Official.

[FR Doc. 05–2896 Filed 2–14–05; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, February 22, 2005, 2 p.m. eastern time.

PLACE: Clarence M. Mitchell, Jr. Conference room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes;
2. Contract for Continuing Health Unit Services; and
3. FY 2005 State & Local Budget Allocations.

Note: In accordance with the Sunshine Act, this meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

This notice issued February 11, 2005.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 05–3005 Filed 2–11–05; 8:45 am]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 1, 2005.

Summary: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Dates: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 18, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Addresses: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

For Further Information Contact: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

Supplementary Information:

OMB Control No.: 3060–0589.

Title: FCC Remittance Advice and Continuation Sheet, Bill for Collection, FCC Remittance Advice for Regulatory Fees (E-Form).

Form Nos.: FCC Forms 159, 159–C, 159–B, and 159–E.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; Federal government, and State, local, or tribal government.

Number of Respondents: 300,000.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 150,000 hours.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The Commission has created a new streamlined electronic form, FCC Form 159–E, to associate a mailed or faxed payment with

regulatory fees which were filed on-line. Pertinent information will be taken directly from the regulatory fee electronic filing system (Fee Filer) and populated on the FCC Form 159–E, which can be printed by the filer. The FCC Form 159–E, essentially a simple payment voucher, will contain summary information which will distinguish the payment but not detailed information about the fee(s). Specific associated fee information will be available on a separate report which the filer does not need to remit. Beginning with FY 2005 regulatory fees, the FCC Form 159–E must accompany all payments derived from the regulatory fee electronic filing system, except on-line payments, which do not require any paper submission. Payment may be made by check or money order, credit card or wire transfer.

The Commission will use this information to apply credit for the remittance against all regulatory fees within the associated electronic submission. The payment instrument must be in the dollar amount specified on the FCC Form 159–E for full credit to be applied.

Expanded use of the FCC Form 159–E is possible in the future as additional streamlining for this process is implemented. This form may be used in lieu of pre-populated FCC Form 159's which are currently produced to facilitate remittance for various electronic filings. The FCC Form 159–E may, therefore, impact users of all electronic filing systems, as well as users of an FCC bill paying system (currently Fee Filer and the Red Light Display system).

OMB Control No.: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; and State, local, or tribal government.

Number of Respondents: 250,520.

Estimated Time Per Response: 1.25 hours.

Frequency of Response: On occasion and other reporting requirements (every 10 years), third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 219,205 hours.

Total Annual Cost: $50,104,000.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The FCC Form 601 is a consolidated, multi-part application or ''long form'' for market-based licensing and site-by-site licensing in the Wireless Telecommunications Bureau's (WTB's) Radio Services' Universal Licensing System (ULS). The WTB will be making changes to the FCC Form 601 to accommodate the new License Manager online filing process of which may include adding questions, deleting questions, or modifying existing ones. The information is used by the Commission to determine whether the applicant is legally, technically, and financially qualified to be licensed. There is no change to the estimated average burden hours or number of respondents.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–2888 Filed 2–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2690]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

January 31, 2005.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by March 2, 2005. See § 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations. (MB Docket No. 03–185).

Number of Petitions Filed: 2.

Subject: In the Matter of the modification of Parts 2 and 15 of the Commission's Rules for unlicensed devices and equipment approval (ET Docket No. 03–201).

Number of Petitions Filed: 1.

Subject: In the Matter of new Part 4 of the Commission's Rules Concerning Disruptions to Communications (ET Docket No. 04–35).

Number of Petitions Filed: 9.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–2887 Filed 2–14–05; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 04–25]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1218]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2004–57]

Shared National Credit Data Collection Modernization Extension of Comment Period

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); the Federal Deposit Insurance Corporation (FDIC); and the Office of Thrift Supervision, Treasury (OTS) as an assisting agency.

ACTION: Request for comments; extension of comment period.

SUMMARY: On December 20, 2004, the federal banking agencies (Board, FDIC, OCC, and OTS, collectively referred to as ''the Agencies'') published a proposal for public comment to standardize and expand the data collected from regulated institutions in order to improve the efficiency and effectiveness of Shared National Credit (SNC) examinations. By standardizing and expanding the collection of data, the Agencies will be able to use advanced credit risk analytics that will be beneficial to the reporting banks and the Agencies. The Agencies are extending the comment period to give the public additional time to submit comments on the proposal.

DATES: Comments must be received by April 7, 2005.

ADDRESSES: Because the Agencies will jointly review all of the comments submitted, interested parties may send comments to any one of the Agencies without the need to send comments (or copies) to all of the Agencies. Postal service in the Washington, DC area and

at the Agencies is subject to delay, so please consider submitting your comments by e-mail or fax. Commenters are encouraged to use the title ''SNC Program Modernization'' to facilitate the organization and distribution of comments among the Agencies. Interested parties may submit comments to:

OCC: You should include OCC and Docket Number 04–25 in your comment. You may submit comments by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

OCC Web Site: http://www.occ.treas.gov. Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''

E-mail address: regs.comments@occ.treas.gov.

Fax: (202) 874–4448.

Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.

Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this notice of proposed rulemaking. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.

Viewing Comments Electronically: You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at *regs.comments@occ.treas.gov.*

Docket: You may also request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP–1218 by any of the following methods:

Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.

Fax: (202) 452–3819 or (202) 452–3102.

Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed in electronic or paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.,) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html. Follow the instructions for submitting comments.

E-mail: comments@FDIC.gov.

Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Hand Delivered/Courier: The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

Instructions: Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html*, including any personal information provided.

OTS: You may submit comments, identified by No. 2004–57, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail address: regs.comments@ots.treas.gov. Please include No. 2004–57 in the subject line of the message and include your name and telephone number in the message.

Fax: (202) 906–6518.

Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004–57.

Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2004–57.

Instructions: All submissions received must include the agency name and No. 2004–57 for this *Request For Comment.* All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.*

In addition, you may inspect comments at the Public Reading Room, 1700 G Street, N.W., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: OCC: MaryAnn Nash, Counsel, Legislative and Regulatory Affairs Division (202) 874–5753; or Larry Winter, Director, Large Bank Supervision, 202–874–2715; or Kevin Satterfield, Public Reference Room Assistant, Communications Division, 202–874–4700.

Board: John T. Colwell, Senior Project Manager, Division of Bank Supervision and Regulation, (202) 728–5885. For users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

FDIC: William R. Baxter, Chief, Large Bank Section, Division of Supervision and Consumer Protection, (202) 898–8514 or *wbaxter@fdic.gov*; Cecilia L. Barry, Senior Financial Analyst, Large Bank Section, Division of Supervision and Consumer Protection, (202) 898–3506 or *cbarry@fdic.gov*; Rodney D. Ray, Counsel, Legal Division, (202) 898–3556 or *rray@fdic.gov*; or Leneta G. Gregorie, Counsel, Legal Division, (202) 898–3719 or *lgregorie@fdic.gov*.

OTS: David W. Tate, Manager, Examination Quality Review, (202) 906–5717.

SUPPLEMENTARY INFORMATION: On December 20, 2004, the Agencies sought comment on proposed changes to the data collection requirements for the

Shared National Credit (SNC) program.[1] In that notice, the Agencies discussed their proposal to improve the efficiency and effectiveness of the SNC program by standardizing and expanding the data collected from regulated institutions. The comment period ended on February 15, 2005.

The Agencies received several requests from interested parties for additional time in which to submit a comment on the proposal. As stated in the Notice, the Agencies intend to use feedback provided by commenters to assist us in determining the ultimate design of the expanded data collection process. The Agencies are extending the comment period to April 7, 2005 in order to maximize the opportunity for commenters to provide useful feedback.

Dated: February 9, 2005.

Julie L. Williams,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Bank Supervision and Regulation under delegated authority, February 7, 2005.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 9th day of February, 2005.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: February 8, 2005.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 05–2847 Filed 2–14–05; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Tuesday, February 22, 2005.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, February 11, 2005.

Robert dev. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–2992 Filed 2–11–05; 1:29 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, The Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Privacy and Confidentiality.

Time and Date: 9 a.m.–5 p.m., February 23, 2005. 9 a.m.–5 p.m., February 24, 2005.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: At this meeting, the NCVHS Subcommittee on Privacy and Confidentiality will receive information on the privacy implications of health information technology.

The first day of the meeting will be conducted as a hearing, in which the Subcommittee will gather information about the importance of health privacy, and privacy in health care and society. The Subcommittee will invite representatives who can provide information about these matters. The format for the meeting will include one or more invited panels and time for questions and discussion. The first day will also include a time period during which members of the public may deliver brief (3 minutes or less) oral public comment. To be included on the agenda, please contract Marietta Squire (301) 458–4524, by e-mail at *mrawlinson@cdc.gov* or postal address at 3311 Toledo Road, Room 2340, Hyattsville, MD 20782 by February 22, 2005.

The second day of the meeting will be conducted as a hearing, in which the Subcommittee will gather information about the impact of health information technology and privacy concerns on consumer health care and on patients with chronic or serious diseases, and the impact of privacy concerns on electronic personal health records. The Subcommittee will invite representatives who can provide information about these matters. The format will include one or more invited panels and time for questions and discussion.

Persons wishing to submit written testimony only (which should not exceed five double-spaced typewritten pages) should endeavor to submit it by that date. Unfilled slots for oral testimony will also be filled on the days of the meeting as time permits. Please consult Ms. Squire for further information about these arrangements.

Additional information about the hearing will be provided on the NCVHS Web site at *http://www.ncvhs.hhs.gov* shortly before the hearing date.

Contact Person for More Information: Information about the content of the hearing and matters to be considered may be obtained from Kathleen H. Fyffe, Lead Staff Person for the NCVHS Subcommittee on Privacy and Confidentiality, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human services, 440D Humphrey Building, 200 Independence Avenue, SW., Washington DC 20291, telephone (202 690–7152, e-mail *Kathleen.Fyffe@hhs,gov* or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 2413, Presidential Building IV, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 457–4245.

Information about the committee, including summaries of past meetings and a roster of committee members, is available on the Committee's Web site at *http://www.ncvhs,hhs.gov.*

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: February 7, 2005.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, OASPE.

[FR Doc. 05–2849 Filed 2–14–05; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry Academic Partners Public Health Training Grant

Announcement Type: New.

Funding Opportunity Number: RFA 05045.

Catalog of Federal Domestic Assistance Number: 93.283.

Dates: Letter of Intent (LOI) Deadline: March 2, 2005.

[1] *See* Shared National Credit Data Collection Modernization, 69 FR 76034 to 76041 (December 20, 2004).

Application Deadline: March 17, 2005.

I. Funding Opportunity Description

Authority: 42 U.S.C.b(k)(2).

Purpose: The purpose of the program is to (a) provide trainees the opportunity to learn about broad, cross-cutting public health policy and program development at the Federal, state, and local government level; and (b) make progress toward achieving the prevention objectives of ''Healthy People 2010.''

''Healthy People 2010,'' the prevention agenda for the Nation, is a statement of national health objectives designed to identify the most significant preventable threats to health and establish national goals to reduce these threats. This program announcement addresses all the priority areas of ''Healthy People 2010.''

Measurable outcomes of the program will be in alignment with one (or more) of the following goal(s) for the Centers for Disease Control and Prevention: (1) Implement training programs to build an effective health workforce to respond to current and emerging public health threats; and (2) increase the number of frontline public health workers at the federal, state, tribal and local level.

This announcement is only for non-research activities supported by CDC/ATSDR. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Activities: In conducting activities to achieve the purpose of this training grant, applicants will be responsible for developing one or more of the following training programs:

1. Fellowship Program: These programs are focused experience of 6 to 24 months targeted to students completing a master's or doctoral degree in the disciplines of public health, medicine, and preventive medicine prior to the beginning of the fellowship; and early career public health, medical, and preventive medicine professionals with a graduate degree.

2. Internship Program: These programs are generally twelve-weeks, with the possibility of one twelve week full time extension or up to 480 hours on a part time basis for full or part-time students enrolled in a Master's or doctoral level degree program.

3. Career Development Program: These are postgraduate experiences of varying duration targeted to an academic faculty and/or established public health professional who possesses a graduate degree in health science and/or related field. The project duration cannot exceed three years;

4. Preventive Medicine Resident Practicum: Residents enrolled in an academic, state, or local residency program in one of the following areas: Preventive Medicine/Public Health, Occupational Medicine or Aerospace Medicine. All programs must be accredited by the Accreditation Council for Graduate Medical Education (ACGME). Training opportunities, which may be filled by residents, include one three-month rotation at CDC/ATSDR, or one six-month rotation at the state/local level; or a split, or combination rotation, in which a resident spends three months at CDC/ATSDR and up to six months at the state/local level;

5. Short-term Training Program: These are targeted topic specific training opportunities for part-time masters, doctoral degree candidates, and/or medical students/residents. Project may begin at any time and are to be completed with a maximum period of six months; and or;

6. Medical Student Training Program: Programs from 4–12 weeks available for Medical students as either elective rotations or non-credit special projects.

For the purpose of this program announcement, students will be identified as trainees for the six training programs listed above. Applicants may submit a separate application for one or more of the six individual training programs.

Activities:

Awardees activities for these programs are as follows:

• Identify training needs by working with one or more of the following: accredited public health, and preventive medicine schools and programs; teaching hospitals; state and local governmental public health agencies with public health, medical, and preventive medicine specialist training and education programs, and continuing education programs.

• Develop a training program to provide exposure to a broad array of policy and program development areas, and attain competency in applying analytical methods through specific projects.

• Develop a program plan that includes the following:

1. Advertising and marketing the training program.

2. Developing guidelines for trainees and mentors.

3. Screening and selecting trainees.

4. Orientation to program, federal system, benefits and obligations.

5. Matching trainees with mentors.

6. Monitoring and evaluation of trainee's progress.

7. Monitoring trainee's accounting (stipend; travel; allowance).

8. Resolving unexpected problems.

9. Evaluation of the training program.

• Establish an advisory committee to provide guidance and to determine the specifics of the training program.

• Coordinate meetings with trainees to receive feedback from program evaluations upon completion of their training.

• Facilitate partnerships to enhance recruitment of minority applicants.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: 2005.

Approximate Total Funding: $4,000,000. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: Three–Six.

Approximate Average Award: $278,000—$1,000,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: None.

Ceiling of Award Range: $1,000,000. (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: May 2, 2005.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations such as:

• Public nonprofit organizations.

• Private nonprofit organizations.

• Faith-based organizations.

• American Indian, Alaska Native, Native Hawaiian and Hispanic health professions organizations.

• Historical black colleges and universities.

• Asian and Pacific Islanders' health professions organizations.

In the United States, the primary educational system that trains personnel needed to operate the Nation's local, state, and Federal public health agencies is made up of institutions which emphasize public health, medicine, and preventive medicine in their academic

programs. In an effort to reach numerous institutions CDC has worked collaboratively with various organizations to include public non-profit, private nonprofit, faith-based, American Indian, Alaska Native, Native Hawaiian and Hispanic health professions, Historical black colleges and universities, and Asian and Pacific-Islanders health professions organizations to develop a high quality and diverse public health workforce.

This collaborative effort with CDC/ATSDR enabled these organizations to further develop the public health workforce and improve the interaction between public health academicians. These organizations help enhance the preparation of future public health workers, as well as to meet the Healthy People 2010 objectives at the state and local level. They provide advance education to prepare students for the work of controlling and preventing disease and managing the nation's health resources.

In addition, these organizations have the capacity to strengthen the public health workforce by providing structured multi-disciplinary training and professional development opportunities to preventive medicine residents, medical students, public health students, master's/doctoral level students and career professionals.

The training programs funded by this grant will further prepare students by providing practical training, which builds upon their graduate education. For students and new graduates, these training programs will serve as a transition from academia to professional public health practice. The Career Development Program will also provide hands-on training in contemporary public health practice to upgrade the knowledge, skills, and abilities of public health, medical, and preventive medicine faculty and early career professionals.

This Training Grant will assist in fulfilling CDC/ATSDR's mission by preparing the next generation of public health professionals.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- An LOI is requested (see section ''IV.3. Submission Dates and Times''),
- If your proposed project exceeds ''Project Period Length'' (see section ''II. Award Information'') your application will be considered non-responsive and will not be entered into the review process.
- Applicants who fail to meet the eligibility requirements in section ''III.1. Eligible Applicants'' will be considered non-responsive and will not be entered into the review process.
- *Note:* Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission: CDC strongly encourages you to submit your application electronically by utilizing the forms and instructions posted for this announcement on *http://www.Grants.gov,* the official Federal agency wide E-grant Web site. Only applicants who apply online are permitted to forego paper copy submission of all application forms.

Paper Submission: Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI)

Electronic Submission: You may submit your LOI electronically at: *http://www.grants.gov* by filling out the required Grants.gov information and attach a word document.

Paper Submission: If submitting by paper copy, send the original and two hard copies of your application by mail or express delivery service.

Your LOI must be written in the following format:

- Maximum number of pages: 3.
- Font size: 12-point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon and undefined acronyms.

Your LOI must contain the following information:

- Title of this Announcement.
- Descriptive Title of your proposed Training Grant.
- Name, address, e-mail address, and telephone number of the Principal Investigator.
- Names of other key personnel.
- A brief summary of the proposed Training Grant.

Application

Electronic Submission: You may submit your application electronically at: *http://www.grants.gov.* Applications completed online through Grants.gov are considered formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov.* Electronic applications will be considered as having met the deadline if the application has been submitted electronically by the applicant organization's Authorizing Official to Grants.gov on or before the deadline date and time.

It is strongly recommended that you submit your grant application using Microsoft Office products (*e.g.,* Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. Directions for creating PDF files can be found on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF may result in your file being unreadable by our staff.

CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. Any such paper submission must be received in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. The paper submission must be clearly marked: ''BACK-UP FOR ELECTRONIC SUBMISSION.'' The paper submission must conform with all requirements for

non-electronic submissions. If both electronic and back-up paper submissions are received by the deadline, the electronic version will be considered the official submission.

Paper Submission: If you plan to submit your application by hard copy, submit the original and two hard copies of your application by mail or express delivery service. Refer to section IV.6. Other Submission Requirements for submission address.

You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 30 pages. If your narrative exceeds the page limit; only the first pages which are within the page limit will be reviewed.
- Font size: 12-point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Clearly numbered pages.
- Held together only by metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed below:

1. Background

Briefly describe the background, critically evaluating the national, regional and local need/demand for the project and specifically identifying the gaps, which the project is intended to fill.

2. Goals and Objectives

a. List goals specifically related to program requirements, and indicate expected program outcome at the end of the three-year project period.

b. Address program objectives (objectives of the overall program) and educational objectives (objectives specifying what trainees will be able to do upon completion of the training program) which will be accomplished through support of the proposed project. Objectives should be measurable, feasible, and time phased to be accomplished during the projected 12-month budget period. Also objectives should relate directly to the program goals.

3. Method

a. Provide a yearly timeline describing activities, methods, strategies and techniques that will be used to accomplish the objectives of the project.

b. Identify strategies and activities for increasing the applicant's involvement in promoting and supporting the training program.

c. Explain the review process for the selection of Trainees, addressing CDC program goals and objectives.

4. Evaluation Plan

a. Describe how each of the activities and their impact will be evaluated.

b. Describe how progress toward meeting project objectives will be monitored.

c. The evaluation plan should address measures considered critical to determine the success of the plan outlined by the applicant, and results should be used for improvement of the intended plan.

5. Project Management and Staffing Plan

a. Describe the proposed staffing for the project and submit job descriptions of key personnel illustrating their qualifications and experience to carryout project activities.

b. Describe the organization's structure and function, and how it supports health promotion and educational activities.

c. Describe application appendices; include curriculum vitae for each key personnel named in the proposal.

6. Budget Plan and Budget Justification (The budget and justification will not be counted in the page limit)

a. Provide a detailed budget and budget justifications, which indicate the anticipated costs for personnel, fringe benefits, travel, supplies, contractual, consultants, equipment, indirect, and other items.

Applications should include budget items for travel to CDC sponsored meetings.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- As a separate appendix to the application, the applicant must provide a labeled ''Documentation of Eligibility,'' and the location of the appendix must be identified in the table of contents. This appendix should succinctly summarize the applicant's eligibility and should include experience and expertise as they relate to the eligibility requirements for this training program.
- Principal Investigator must provide documented evidence of his or her experience, expertise, ability, and institutional support to accomplish the proposed project. The Principal Investigator should have at least two years of related experience.
- Biographical sketches and Curriculum Vitaes must be provided for key personnel responsible for planning and implementing this training program.
- Provide letters of support illustrating applicant's experience in managing training programs.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: March 2, 2005.

CDC requests that you submit a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: April 1, 2005.

Explanation of Deadlines: LOIs and Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content,

submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

Electronic Submission: If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped which will serve as receipt of submission. In turn, you will receive an e-mail notice of receipt when CDC receives the application. All electronic applications must be submitted by 4 p.m. eastern time on the application due date.

Paper Submission: CDC will not notify you upon receipt of your paper submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months old.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Ruth E. Harris, Project Officer, Office of Workforce and Career Development (OWCD), 4770 Buford Highway, NE. (MS K–38), Atlanta, GA 30341. Telephone Number: 770–488–2522. Fax: 770–488–2574. E-mail address: *reh6@cdc.gov*.

Application Submission Address

Electronic Submission: CDC strongly encourages applicants to submit electronically at: *http://www.Grants.gov*. You will be able to download a copy of the application package from *http://www.Grants.gov*, complete it offline, and then upload and submit the application via the Grants.gov site. E-mail submissions will not be accepted. If you are having technical difficulties in Grants.gov they can be reached by e-mail at *http://www.support@grants.gov* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday.

Paper Submission: If you chose to submit a paper application, submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—RFA 05045, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Goals and Objectives (30 Points)

a. Are the goals and objectives clearly stated, realistic, time-phased, and adequately detailed as it relates to the programmatic requirements proposed in the program announcement?

b. Are the objectives and goals measurable, feasible and time sufficient to accomplish the project during a 12 month period?

2. Method (30 Points)

a. To what extent does the applicant describe the methodologies for accomplishing the program objectives?

b. Has the applicant described the program activities and provided a yearly timeline?

c. Has the applicant clearly explained the review process for the selection of Trainees as it relates to the goals and objectives?

d. Has the applicant clearly identified strategies and program activities to support the training program?

3. Evaluation Plan (20 Points)

a. Did the applicant provide a detailed plan for evaluating progress towards meeting the goals and objectives of the project and its impact?

b. Did evaluation plan appear to be reasonable and feasible?

c. Did applicant describe how the progress toward meeting the project objectives will be monitored?

4. Project Management and Staffing Plan (20 Points)

a. Are the proposed project personnel fully qualified, with evidence of experience and evidence in past activities or achievements appropriate to a project of this magnitude and scope?

b. Did the applicant give a detailed description of the systems and procedures which will be used to manage the progress, budget, and operations of the project?

c. Did the applicant clearly describe the organization's structure and functions as it relates to supporting health promotion and educational activities?

5. Budget (Not Scored)

a. How well does the applicant provide justification for budget expenditures as well as appropriateness of activities proposed in the application?

b. Was the budget reasonable, clearly justified, and consistent with the intended use of the grant funds?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by Coordinating Center for Health Information and Service (CoCHIS). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in section ''V.1. Criteria.'' Applicants may submit a separate application for any or all of the following six individual programs stated in section ''I. Activities'': (1) Fellowship Program; (2) Internship Program; (3) Career Development Program; (4) Preventive Medicine Resident Practicum; (5) Short-term Training Program; and (6) Medical Student Training Program. Each application will be evaluated on a 100-point basis to determine the applicant's numerical score in each individual program area for which they apply. The objective review panel will consist of three reviewers from CDC staff, which are not

employees of the cognizant program office. Each reviewer will present his or her findings to the panel. The panel will vote to approve or disapprove based upon the criteria listed in section ''V.1.Criteria.''

In addition, the following factors may affect the funding decision:

- Availability of funds.
- Preference will be given to organizations with: (1) Three or more years experience in developing graduate level training and education programs in public health, public health related disciplines, and preventive medicine, nationally; (2) the capacity for national-level reach and collaboration with accredited institutions or schools; and state and local governmental public health agencies with public health, (3) three or more years of access to graduate students, faculty, researchers, and professionals in the disciplines of public health, medicine, and preventive medicine, nationally; and (4) evidence of recruiting a diverse applicant pool including underrepresented minorities.

Applications will be funded in order by score and rank determined by the review panel. CDC/ASTDR will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

May 2, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR parts 74 and 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

An additional Certifications form from the PHS5161–1 application needs to be included in your Grants.gov electronic submission only. Refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1–Certificates.pdf*. Once the form is filled out attach it to your Grants.gov submission as Other Attachments Form.

The following additional requirements apply to this project:

- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.
- AR–16 Security Clearance Requirement.
- AR–23 States and Faith-Based Organizations.
- AR–25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Budget.
   e. Measures of Effectiveness.
   f. Additional Requested Information.
2. Financial status report and annual progress report, due no more than 90 days after the end of the budget period.
3. Final financial and performance reports, due no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Telephone: 770–488–2700.

For program technical assistance, contact: Ruth E. Harris, Project Officer, Office of Workforce and Career Development, 4770 Buford Highway, NE., MSK–38, Atlanta, GA 30341.

Telephone: 770–488–2522.

E-mail: *reh6@cdc.gov*.

For financial, grants management, or budget assistance, contact: Rick Jaeger, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Telephone: 770–488–2727.

E-mail: *ryj4@cdc.gov*.

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

The Director, Procurement and Grants Office, CDC, has been delegated the authority to sign **Federal Register** notices pertaining to the availability of grant and cooperative agreement funds.

Dated: February 9, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2851 Filed 2–14–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Announcement of the CDC-Wide Research Agenda Development Public Participation Meetings

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry (CDC) is developing a CDC-Wide Research Agenda, and invites the public to provide input. Four Research Agenda Development Public Participation Meetings will be held across the country (March 8, 2005, Arlington, VA; March 18, 2005, Atlanta, GA; March 24, 2005, Seattle, WA; and March 31, 2005, Columbus, OH).

Background: On January 10, 2005, the Centers for Disease Control and Prevention launched an effort to develop its first ever, agency-wide public health research agenda. The new agenda will address and support CDC's health protection goals (*http://www.cdc.gov/futures/Goals_01–6–05.pdf*). The agenda will also provide overall guidance for CDC's intramural and extramural research as well as serve as an effective planning and communication tool for CDC's public health research.

Request for Comments: The public is invited to participate in the

development of the CDC-Wide Research Agenda. The CDC will host four Research Agenda Development Public

Participation Meetings. These events will give researchers, representatives of CDC key partner organizations and the public the opportunity to voice their opinions regarding the future direction of CDC's public health research. The four meetings will be held: March 8, 2005, 8:30 a.m.–5 p.m., Hilton Crystal City Hotel at Ronald Reagan National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202; telephone 703–418–6800. Registration begins February 25, 2005. March 18, 2005, 8:30 a.m.–5 p.m., National Center for Primary Care at Morehouse School of Medicine, 720 Westview Dr., SW., Atlanta, GA 30310; telephone 404–756–5740. Registration begins March 4, 2005. March 24, 2005, 8:30 a.m.–5 p.m., Crowne Plaza Seattle, 1113 Sixth Avenue, Seattle, WA 98101; telephone 206–464–1980. Registration begins March 11, 2005. March 31, 2005, 8:30 a.m.–5 p.m., Hyatt Regency, 350 North High Street, Columbus, OH, 43215; telephone 614–463–1234. Registration begins March 18, 2005.

Attendance by the public will be limited to the space available. Please communicate with the individuals listed below to request special accommodations for persons with disabilities.

All those wishing to attend any of the meetings must register. See specific meeting above for date of registration. To register, please visit *http://www.maximumtechnology.com/cdcreg.htm.* Additional information will be available as of February 21st via the Office of Public Health Research Web site, *http://www.cdc.gov/od/ophr/,* or may be obtained by communicating with the contact whose name and telephone number is listed below.

Contacts: Ms. Mollie Ergle, Meeting Coordinator, Office of Public Health Research, Centers for Disease Control and Prevention, Mail Stop E–72 1600 Clifton Rd. NE., Atlanta, GA 30333, E-mail: *mergle@cdc.gov.* Phone: 404–498–0132; Fax: 404–498–0011.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: February 9, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2852 Filed 2–14–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: DHHS/ACF/ASPE/DOL Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project Follow-up Surveys.

OMB No.: 0970–0251.

Description: The Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project (HtE) is the most ambitious, comprehensive effort to learn what works in this area to date and is explicitly designed to build on previous and ongoing research by rigorously testing a wide variety of approaches to promote employment and improve family functioning and child well-being. The HtE project will ''conduct a multi-site evaluation that studies the implementation issues, program design, net impact and benefit-costs of selected programs'' [1] designed to help Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients or low-income parents who are hard-to-employ. The project is sponsored by the Office of Planning, Research and Evaluation (OPRE) of the Administration for Children and Families (ACF), the Office of the Assistant Secretary for Planning and Evaluation (ASPE) in the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Labor (DOL).

The evaluation involves an experimental, random assignment design in up to five sites (four are confirmed), testing a diverse set of strategies to promote employment for low-income parents who face serious obstacles to employment. The four include: (1) Intensive care management to facilitate the use of evidence-based treatment for major depression among parents receiving Medicaid in Rhode Island; (2) job readiness training, worksite placements, job coaching, job development aNd other training opportunities for recent parolees in New York City; (3) pre-employment services and transitional employment for long-term TANF participants in Philadelphia; and (4) home- and center-based care for low-income families who have young children or are expecting in Kansas and Missouri. The latter is a two-generation test, designed to help the children and their parents.

[1] From the Department of Health and Human Services RFP No.: 233–01–0012.

Over the next several years, the HtE project will generate a wealth of rigorous data on implementation, effects and costs of these alternative approaches. The follow-up surveys will be used for the following purposes:

- To study the extent to which different HtE approaches impact employment, earnings, income, welfare dependence and the presence or persistence of employment barriers;
- To study how different HtE strategies impact child well-being, when programs are directed toward parents and when they are designed to target both generations;
- To collect data on a wider range of outcome measures than is available through Welfare, Medicaid, Food Stamps, Social Security, the Criminal Justice System or Unemployment Insurance records in order to understand the family circumstances and attributes and situations that contribute to the difficulties in finding employment; job retention and job quality; educational attainment; interactions with and knowledge of the HtE program; household composition; child care; transportation; health care; income; physical and mental health problems; substance abuse; domestic violence; and criminal history.
- To conduct non-experimental analyses to explain participation decisions and provide a descriptive picture of the circumstances of individuals who are hard-to-employ;
- To obtain participation information important to the evaluation's benefit-cost component; and to obtain contact information for possible future follow-up, which will be important to achieving high response rates for additional surveys.

Materials for the HtE baseline survey were previously submitted to OMB on April 29, 2003, and a revised packet for the Rhode Island site was submitted on April 7, 2004. Both submissions have been approved by OMB.

The purpose of this submission is to introduce the five survey instruments that will be used to collect follow-up data in the four confirmed sites. These are as follows:

1. A 6-month follow-up survey in Rhode Island (Mental Health Test);
2. A 15-month follow-up survey in Rhode Island (Mental Health Test);
3. A 12-month follow-up survey in New York City (Recent Parolees);
4. A 12-month follow-up survey in Philadelphia (Transitional Employment for long-term TANF participants); and
5. A 12-month follow-up survey in Kansas and Missouri (Two Generation Test).

Respondents: The respondents to these follow-up surveys will be low-income individuals from the five states represented by the four sites currently participating in the HtE Project: Kansas, Missouri, New York, Pennsylvania and Rhode Island. Many will be current or former TANF participants, and many will be current or former recipients of Medicaid. These populations are at heightened risk for all of the barriers that cause people to be hard-to-employ.

Prior to these follow-up surveys, basic demographic information for all survey respondents will have been obtained wherever possible from the existing automated systems or brief baseline information forms. In the Rhode Island site, respondents will have completed a more detailed baseline survey, which is required to establish baseline measures of depression and related conditions.

The annual burden estimates are detailed below, and the substantive content of each survey are detailed in the supporting statement.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Rhode Island, 6–month	734	1	38 minutes or .63 hrs	464.87
Rhode Island, 15–month	734	1	45 minutes or .75 hrs	550.50
New York City, 12–month	1,000	1	32 minutes or .53 hrs	533.33
Philadelphia, 12–month	750	1	25 minutes or .42 hrs	312.50
Kansas/Missouri, 12–month	680	1	45 minutes or .75 hrs	510.00

Estimated Total Annual Burden Hours. 2,371.20

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families. Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: February 8, 2005

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–2825 Filed 2–14–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects:

Title: Community-Based Child Abuse Prevention Program (CBCAP).

OMB No.: 0970–0155.

Description: The Program Instruction, prepared in response to the enactment of the Community-Based Grants for the Prevention of Child Abuse and Neglect (administratively known as the Community-Based Child Abuse Prevention Program (CBCAP)), as set forth in Title II of Pub. L. 108–36, Child Abuse Prevention and Treatment Act Amendments of 2003, provides direction to the States and Territories to accomplish the purposes of (1) supporting community-based efforts to develop, operate, expand and, where appropriate, to network initiatives aimed at the prevention of child abuse and neglect and to support networks of coordinated resources and activities to better strengthen and support families to reduce the incidence of child abuse and neglect; and (2) fostering an understanding, appreciation and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect. This Program Instruction contains information collection requirements that are found in Pub. L. 108–36 at Sections 201, 202, 203, 205, 206, 207, and pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute, complete the calculation of the grant award entitlement, and provide training and technical assistance to the grantee.

Respondents: State Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Annual Report	52	1	24	1,248

Estimated Total Annual Burden Hours 3,328

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF

Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail: *grjohnson@acf.hhs.gov*.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 8, 2005.

Robert Sargis,

Reports Clearance, Officer.

[FR Doc. 05–2826 Filed 2–14–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0042]

Draft Guidance on the Open Public Hearing; Food and Drug Administration Advisory Committee Meetings; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''The Open Public Hearing; FDA Advisory Committee Meetings.'' This draft guidance is for members of the public who choose to participate in the open public hearing (OPH) session of an FDA advisory committee meeting. The draft guidance is intended to answer more fully questions about how the public may participate at an OPH session, and it includes topics such as meeting logistics and administrative requirements.

DATES: Submit written or electronic comments on this draft guidance by June 15, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to Linda Ann Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov.dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Linda Ann Sherman, Office of the Commissioner (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220, e-mail: *disclosure@oc.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''The Open Public Hearing; FDA Advisory Committee Meetings.''

Guidance documents are prepared for FDA staff, applicants/sponsors, and the public that describe the agency's interpretation of, or policy on, a regulatory issue. Every committee meeting includes an OPH during which interested persons may present relevant information or views orally or in writing 21 CFR 14.25(a). The hearing is conducted in accordance with 21 CFR 14.29. FDA encourages the participation from all public speakers in its decisionmaking processes. The draft guidance is intended to answer more fully questions about how (including topics such as meeting logistics and administrative requirements) the public may participate at an OPH session. This includes, but is not limited to, general members of the public; individuals or spokespersons from the regulated industry; consumer advocacy groups; and professional organizations, societies, or associations.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices (21 CFR 10.115). The draft guidance, when finalized will represent the agency's current thinking on an FDA advisory committee open public hearing. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two paper copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/oc/advisory/default.htm* in the policy and guidance section of FDA's advisory committee Intranet Web site.

Dated: February 8, 2005.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 05–2822 Filed 2–14–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0033]

Draft Guidance for Industry on Internal Radioactive Contamination—Development of Decorporation Agents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Internal Radioactive Contamination—Development of Decorporation Agents.'' This draft document provides guidance to industry on the development of decorporation agents for the treatment of internal radioactive contamination when evidence is needed to demonstrate the effectiveness of the agents, but human efficacy studies are unethical or infeasible. In such instances, the Animal Efficacy Rule may be invoked to approve new medical products not previously marketed or new indications for previously marketed products. Specifically, this draft guidance addresses chemistry, manufacturing and controls (CMC) information; animal efficacy, safety pharmacology, and toxicology studies; clinical pharmacology, biopharmaceutics, and human safety studies; and postapproval commitments.

DATES: Submit written or electronic comments on the draft guidance by May

16, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Patricia A. Stewart, Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Internal Radioactive Contamination—Development of Decorporation Agents.'' This draft guidance is being issued to facilitate the development of new decorporation agents or new uses of previously marketed medical products for the treatment of internal radioactive contamination.

Internal radioactive contamination can arise from accidents involving nuclear reactors, industrial sources, or medical sources. The potential for such accidents has been present for many years. Recent events also have highlighted the potential for nonaccidental radioactive contamination as a result of malicious, criminal, or terrorist actions. Internal contamination occurs when radioactive material is ingested, inhaled, or absorbed from a contaminated wound. As long as these radioactive contaminants remain in the body, they may pose significant health risks. Long-term health concerns include the potential for the development of cancers of the lung, liver, thyroid, stomach, and bone and, when a radioactive contaminant is inhaled, for the development of fibrotic changes in the lung that may lead to restrictive lung disease. The only effective method of reducing these risks is removal of the radioactive contaminants from the body.

''Decorporation agents'' refer to medical products that increase the rate of elimination or excretion of inhaled, ingested, or absorbed radioactive contaminants. The effectiveness of most decorporation agents for the treatment of internal radioactive contamination cannot be tested in humans because the occurrence of accidental or nonaccidental radioactive contamination is rare, and it would be unethical to deliberately contaminate human volunteers with potentially harmful amounts of radioactive materials for investigational purposes.

FDA is issuing this draft guidance to facilitate the development of new decorporation agents or new indications for previously marketed medical products that may be eligible for approval under the Animal Efficacy Rule (21 CFR part 314, subpart I and 21 CFR part 601, subpart H). As set forth in this rule, under certain circumstances animal studies can be relied on to provide substantial evidence of effectiveness of a product. Evaluation of the product for safety in humans is still required, and cannot be addressed by animal studies alone. The adequacy of human safety data will need to be assessed from clinical pharmacology and safety studies conducted in humans. This draft guidance addresses the design and conduct of the requisite CMC, animal efficacy, safety pharmacology, toxicology, clinical pharmacology, biopharmaceutics, and human safety studies needed to support approval of new decorporation agents or new uses of previously marketed medical products for the treatment of internal radioactive contamination.

In addition, approval under the Animal Efficacy Rule is subject to certain postapproval commitments, including submission of a plan for conducting postmarketing studies that would be feasible should an accidental or intentional release of radiation occur, postmarketing restrictions to ensure safe use, if deemed necessary, and product labeling information intended for the patient advising that, among other things, the product's approval was based on effectiveness studies conducted in animals alone. This draft guidance addresses the postapproval commitments that would be needed for approval of a new decorporation agent or for a new indication for a previously approved agent under the Animal Efficacy Rule.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the development of decorporation agents for the treatment of internal radioactive contamination. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: February 4, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2821 Filed 2–14–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Bureau of Primary Health Care (BPHC) Uniform Data System (OMB No. 0915–0193)—Extension

The Uniform Data System (UDS) contains the annual reporting requirements for the cluster of primary care grantees funded by the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA). The UDS is a reporting requirement for grantees of the Consolidated Health Center Program (the Program), which provides support to community health centers, migrant health centers, health care for the homeless centers, public housing primary care centers, and other grantees under the Program's authorizing statute (section 330 of the Public Health Service Act, as amended).

The Bureau collects data in the UDS which is used to ensure compliance with legislative mandates and to report to Congress and policymakers on program accomplishments. To meet these objectives, BPHC requires a core set of data collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Universal Report	920	1	920	27	24,840
Grant Report	125	1	125	18	2,250
Total	920		1045		27,090

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 8, 2005.

Steven A. Pelovitz,

Associate Administrator for Administration and Financial Management.

[FR Doc. 05–2818 Filed 2–14–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Disadvantaged Assistance Tracking and Outcome Report (OMB No. 0915–0233)—Extension

The Health Careers Opportunity Program (HCOP) and the Centers of Excellence (COE) Program (sections 740 and 739 of the Public Health Service (PHS) Act, respectively) provide opportunities for under-represented minorities and disadvantaged individuals to enter and graduate from health professions schools. The Disadvantaged Assistance Tracking and Outcome Report (DATOR), is used to track program participants throughout the health professions pipeline into the health care workforce.

The DATOR, to be completed annually by HCOP and COE grantees, includes basic data on student participants (name, social security number, gender, race/ethnicity; targeted health professions, their status in the educational pipeline from pre-professional through professional training; financial assistance received through the grants funded under sections 739 and 740 of the PHS Act in the form of stipends, fellowships or per diem; and their employment or practice setting following their entry into the health care work force).

The proposed reporting instrument does not add significantly to the grantees reporting burden. This reporting instrument complements the grantees internal automated reporting mechanisms of using name and social security number in tracking students. The reporting burden includes the total time, effort, and financial resources expended to maintain, retain and provide the information including: (1) Reviewing instructions; (2) downloading and utilizing technology for the purposes of collecting, validating, and processing the data; and (3) transmitting electronically, or otherwise disclosing the information. Estimates of annualized burden are as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
DATOR	150	1	5.5	825

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 8, 2005.

Steven A. Pelovitz,

Associate Administrator for Administration and Financial Management.

[FR Doc. 05–2819 Filed 2–14–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506 (c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Health Resources and Services Administration (HRSA) Awardee Application and Reporting Tool (AART): (New)

The Awardee Application and Reporting Tool (AART) will be an online system allowing the 62 Awardees participating in the National Bioterrorism Hospital Preparedness Program (NBHPP) to electronically submit a continuing cooperative agreement application (CAA), mid-year progress report on annual activities, a final report on annual activities and progress indicator report to HRSA's Healthcare Systems Bureau, Division of Healthcare Preparedness. The CAA will be a standardized application consisting of 16 Critical Benchmarks (CBM). For each CBM, Awardees will be required to provide a goal, objectives, and a budget outlining how funding provided by HRSA will be spent during the coming year. On the mid-year progress report, Awardees will indicate the progress they have made toward each of the objectives they noted on their CAA. For the final report on annual activities, Awardees will provide additional details on how their objectives were being achieved and how the program monies were spent. On the progress indicator report, Awardees will indicate the progress they have made to date toward achieving the program's CBM. Currently, the submission of the CAA and progress reports is a manual process by which Awardees submit paper-based submissions or electronically transmit text files to HRSA project officers (POs). These files are then reviewed manually and data analysis is difficult. The AART system will provide POs with the ability to review and approve applications, review progress reports, and generate reports online. In addition, the reporting interface will allow HRSA to quickly and efficiently analyze data, identify trends, make timely program decisions, and provide the Department of Health and Human Services (HHS), Congress, or other Agencies with any specific data or metrics requested.

The burden estimate for Awardees to complete and submit a submission is as follows:

Submission type	Number of respondents	Responses per Respondent	Total number of responses	Hours per response	Total burden hours
Cooperative Agreement Application	62	1	62	120	7,440
Mid-year Report	62	1	62	124	7,688
Final Report on Annual Activities	62	1	62	124	7,688
Progress Indicator Report	62	1	62	124	7,688
Total	62	4	248		30,504

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 8, 2005.

Steven A. Pelovitz,

Associate Administrator for Administration and Financial Management.

[FR Doc. 05–2820 Filed 2–14–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Dates and Times: March 9, 2005, 12 noon–4:30 p.m., EST and March 10, 2005, 9 a.m.–5 p.m., EST.

Place: Audio Conference Call and Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

Status: The meeting is open to the public. The public can join the meeting in person at the address listed above or by audio conference call by dialing 1–888–913–9965 on March 9–10 and providing the following information:

Leader's Name: Joyce Somsak.

Password: ACCV.

Agenda: The agenda items will include, but are not limited to: a summary of the Causation in Fact session at the U.S. Court of Federal Claims' 17th Judicial Conference; a report and discussion from the ACCV Workgroup on changes to the Vaccine Injury Table; and updates from the Division of Vaccine Injury Compensation (DVIC), the

Department of Justice, and the National Vaccine Program Office. Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Cheryl Lee, Principal Staff Liaison, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857 or e-mail *clee@hrsa.gov*. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. These persons will be allocated time as it permits.

For further information contact: Anyone requiring information regarding the ACCV, should contact Ms. Cheryl Lee, Principal Staff Liaison, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–2124 or e-mail *clee@hrsa.gov*.

Dated: February 9, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–2881 Filed 2–14–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health/National Institute of Environmental Health Sciences; Division of Extramural Research and Training

Submission for OMB Review; Comment Request; Hazardous Waste Worker Training

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 8, 2004, pages 71061–71062, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Hazardous Waste Worker Training—42 CFR Part 65. *Type of Information Collection Request:* Revision of OMB No. 0925–0348, expiration date February 28, 2005. *Need and Use of Information Collection:* This request for OMB review and approval of the information collection is required by regulation 42 CFR part 65(a)(6). The National Institute of Environmental Health Sciences (NIEHS) has been given major responsibility for initiating a worker safety and health training program under Section 126 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) for hazardous waste workers and emergency responders. A network of non-profit organizations that are committed to protecting working and their communities by delivering high-quality, peer-reviewed safety and health curricula to target populations of hazardous waste workers and emergency responders has been developed. In seventeen years (FY 1987–2004), the NIEHS Worker Training program has successfully supported 20 primary grantees that have trained more than 1.3 million workers across the country and presented over 69,000 classroom and hands-on training courses, which have accounted for nearly 18 million contact hours of actual training. Generally, the grant will initially be for one year, and subsequent continuation awards are also for one year at a time. Grantees must submit a separate application to have the support continued for each subsequent year. Grantees are to provide information in accordance with S65.4 (a), (b), (c) and 65.6 (b) on the nature, duration, and purpose of the training, selection criteria for trainees' qualifications and competency of the project director and staff, cooperative agreements in the case of joint applications, the adequacy of training plans and resources, including budget and curriculum, and response to meeting training criteria in OSHA's Hazardous Waste Operations and Emergency Response Regulations (29 CFR 1910.120). As a cooperative agreement, there are additional requirements for the progress report section of the application. Grantees are to provide their information in hard copy as well as enter information into the WETP Grantee Data Management System. The information collected is used by the Director through officers, employees, experts, and consultants to evaluate applications based on technical merit to determine whether to make awards. *Frequency of Response:* Biannual. *Affected Public:* Non-profit organizations. *Type of Respondents:* Grantees. The annual reporting burden is as follows: *Estimated Number of Respondents:* 18; *Estimated Number of Responses per Respondent:* 2; *Average Burden Hours Per Response:* 10; and *Estimated Total Annual Burden Hours Requested:* 360. The annualized cost to respondents is estimated at: $10,764. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Joseph T. Hughes, Jr., Director, Worker Education and Training Program, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541–0217 or E-mail your request, including your address to *wetp@niehs.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: February 5, 2005.

Richard A. Freed,

NIEHS, Associate Director for Management.

[FR Doc. 05–2830 Filed 2–14–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

State-of-the-Science Conference on Management of Menopausal Symptoms; Notice

Notice is hereby given of the National Institutes of Health (NIH) ''State-of-the-Science Conference on Management of Menopausal Symptoms'' to be held March 21–23, 2005, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8 a.m. on March 21 and 22, at 9 a.m. on March 23, and will be open to the public.

Women going through the menopause transition may experience a variety of symptoms, ranging from hot flashes, night sweats, and problems sleeping to loss of sexual desire, depression, vaginal dryness, and urinary and bleeding complaints. As many as two-thirds of all women may experience vasomotor symptoms, such as hot flashes and night sweats, in the years around the menopause transition. For some, the resulting discomfort greatly diminishes their quality of life.

For many decades menopausal hormone therapy (MHT) using estrogen (or, in a woman with a uterus, a combination of estrogen and a progestin) has been the therapy of choice for relieving menopause-related symptoms. But recently, several large clinical trials have found mixed results: a greater chance of serious health problems such as blood clots, stroke, heart disease, or breast cancer, and benefits like fewer hip fractures in certain groups of women using MHT. It is not clear how these findings apply to women with symptoms because these clinical trials were not designed to study such women but rather to test whether MHT could prevent chronic diseases or conditions of aging, such as heart disease or cognitive decline. Nevertheless, many women and their doctors are concerned about the use of MHT for their menopausal symptoms and interested in learning about alternatives.

Research has identified a number of hormonal and non-hormonal approaches that show promise for managing menopause-related symptoms. We urgently need a careful examination of these strategies for symptom management to provide women and their health care providers with options that will best control their symptoms and restore their quality of life.

During the first two days of the conference, experts will present information on the biology of the menopause transition, the nature of the symptoms women experience, and strategies for relieving the common problems associated with the menopause transition. After weighing all of the scientific evidence, an independent panel will prepare and present a state-of-the-science statement answering the following key conference questions:

- What is the evidence that the symptoms more frequently reported by middle-aged women are attributable to ovarian aging and senescence?
- When do the menopausal symptoms appear, how long do they persist and with what frequency and severity, and what is known about the factors that influence them?
- What is the evidence for the benefits and harms of commonly used interventions for relief of menopause-related symptoms?
- What are the important considerations in managing menopause-related symptoms in women with clinical characteristics or circumstances that may complicate decision-making?
- What are the future research directions for treatment of menopause-related symptoms and conditions?

On the final day of the conference, the panel chair will read the draft statement to the conference audience and invite comments and questions. A press conference will follow to allow the panel and chair to respond to questions from the media.

The National Institute on Aging and the NIH Office of Medical Applications of Research are the primary sponsors of this meeting.

Advance information about the conference and conference registration materials may be obtained from American Institutes for Research of Silver Spring, Maryland, by calling 888–644–2667 or by sending e-mail to *menopause@air.org*. American Institutes for Research's mailing address is 10720 Columbia Pike, Silver Spring, MD 20901. Registration information is also available on the NIH Consensus Development Program Web site at *http://consensus.nih.gov*.

Please Note: The NIH has recently instituted new security measures to ensure the safety of NIH employees, visitors, patients, and facilities. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the new security measures, please visit the Web site at *http://www.nih.gov/about/visitorssecurity.htm*.

Dated: February 8, 2005.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 05–2829 Filed 2–14–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–05–008]

Lower Mississippi River Waterways Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Lower Mississippi River Waterways Safety Advisory Committee (LMRWSAC). LMRWSAC provides advice and makes recommendations to the Coast Guard on matters relating to the safe navigation of vessels to and from ports on the Lower Mississippi River.

DATES: Applications must be completed and postmarked no later than April 30, 2005.

ADDRESSES: You may request an application form by writing to Commanding Officer, USCG Marine Safety Office New Orleans, Attention: Waterways, 1615 Poydras Street, New Orleans, LA 70112; All application forms must be returned to the following address: Commanding Officer

Attn: LMRWSAC Executive Secretary, USCG Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, LA 70112.

FOR FURTHER INFORMATION CONTACT: LCDR Michael McKean, Executive Secretary of LMRWSAC at (504–628–1555) or LTJG Melissa Owens, Assistant to the Executive Secretary of LMRWSAC at (504–589–4251).

SUPPLEMENTARY INFORMATION: LMRWSAC is a Federal advisory committee subject to the provisions of 5 U.S.C. App. 2. This committee provides local expertise to the Secretary of Homeland Security and the Coast Guard on such matters as communications, surveillance, traffic control, anchorages,

aids to navigation, and other related topics dealing with navigation safety in the Lower Mississippi River area. The committee normally meets at least two times a year in the New Orleans area. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership is for two years. Individuals appointed by the Secretary based on applications submitted in response to this solicitation will serve from December 2005 until December 2007. Per LMRWSAC's Charter, the Committee consists of 24 members who have particular expertise, knowledge, and experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels on the Lower Mississippi River and its connecting navigable waterways, including the Gulf of Mexico. We seek applications for all 24 membership positions. These members are appointed as follows: (1) Five members representing River Port Authorities between Baton Rouge, Louisiana, and the Head of Passes of the Lower Mississippi River, of which one member shall be from the Port of St. Bernard and one member from the Port of Plaquemines; (2) two members representing vessel owners or ship owners domiciled in the State of Louisiana; (3) two members representing organizations that operate harbor tugs or barge fleets in the geographical area covered by the Committee; (4) two members representing companies that transport cargo or passengers on the navigable waterways in the geographical area covered by the Committee; (5) three members representing State Commissioned Pilot organizations, with one member each representing the New Orleans/Baton Rouge Steamship Pilots Association, the Crescent River Port Pilots Association, and the Associated Branch Pilots Association; (6) two at-large members who utilize water transportation facilities located in the geographical area covered by the Committee; (7) three members representing consumers, shippers, or importers/exporters that utilize vessels that utilize the navigable waterways covered by the Committee; (8) two members representing those licensed merchant mariners, other than pilots, who perform shipboard duties on vessels that utilize the navigable waterways covered by the Committee; (9) one member representing an organization that serves in a consulting or advisory capacity to the maritime industry; (10) one member representing an environmental organization; and (11) one member representing the general public. In support of the policy of the Department of Homeland Security on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups. Individuals nominated to represent the general public will be required to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: January 24, 2005.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 05–2872 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 56446–56447) on September 21, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before March 17, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator.

OMB Number: 1651–0066.

Form Number: N/A.

Abstract: This collection is required to ensure that any loss or detention of bonded merchandise, or any accident happening to a vehicle or lighter while carrying bonded merchandise shall be immediately reported by the cartman, lighterman, qualified bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator are properly reported to the port director

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 325.

Estimated Time Per Respondent: 37 minutes.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annualized Cost on the Public: $8,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at (202) 344–1429.

Dated: February 8, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–2856 Filed 2–14–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Low-Effect Habitat Conservation Plan for the Monument Creek Interceptor Tie-In Along Jackson Creek, El Paso County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Triview Metropolitan District and Forest Lakes Metropolitan District (Applicant) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA) of 1973, as amended. The proposed permit would authorize the incidental take of the Preble's meadow jumping mouse, *Zapus hudsonius preblei* (Preble's), federally listed as threatened, through loss and modification of habitat it periodically uses for foraging, breeding and/or hibernation, associated with construction of a new sanitary sewer line extension connecting to an existing sewer line, a nonpotable water reuse line, a secondary sewer line, and a new dirt access road into the Upper Monument Creek Wastewater Treatment Facility (Facility) on Jackson Creek, El Paso County, Colorado. The duration of the permit would be 20 years from the date of issuance.

We announce the receipt of the Applicant's incidental take permit application, which includes a Low-Effect Habitat Conservation Plan (LEHCP) for Preble's on Jackson Creek within the Facility. The LEHCP fully describes the proposed project and the measures the Applicant would undertake to minimize and mitigate project impacts to Preble's.

We are requesting comments on the permit application and on the preliminary determination that the LEHCP is eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the LEHCP and associated Low-Effect Screening Form, which are available for public review.

DATES: Written comments should be received on or before April 18, 2005.

ADDRESSES: Comments should be addressed to Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215. Comments also may be submitted by facsimile to (303) 275–2371.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Spagnuolo, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the LEHCP and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the ESA and Federal regulations prohibit the ''take'' of a species listed as endangered or threatened. Take is defined under the ESA, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize ''incidental take'' of listed species under limited circumstances. Incidental take is defined under the ESA as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The project site is on Forest Lakes, LLC property located south of the Town of Monument, along Jackson Creek, El Paso County, in the State of Colorado. The property site is 96.6 hectares (238.6 acres), but the proposed project will directly impact a maximum of 0.2 hectare (less than 0.6 acre), according to the Service's definition of Preble's habitat. Of the total amount of impacted acreage, 0.2 hectare (0.5 acre) will be temporarily disturbed and revegetated, and 0.03 hectare (0.07 acre) will be permanently disturbed.

In addition to the Proposed Action, consisting of the issuance of the incidental take permit and implementation of the LEHCP, other alternatives considered included are—(a) No action, (b) an alternative construction design for the nonpotable water line, and (c) waiting for the El Paso County Regional HCP to be approved.

To mitigate impacts that may result from incidental take, the LEHCP provides a conservation plan that will likely provide a net benefit to the Preble's and other wildlife by enhancing the Jackson Creek corridor on site and its associated riparian areas through revegetation efforts and protection of mitigation habitat from any future development by deed restriction in perpetuity. Following the brief construction period (4 weeks), 0.2 hectare (0.5 acre) of temporarily disturbed uplands will be replanted with native grasses and shrubs. Enhancement of 0.4 hectare (1.1 acres) of existing upland and riparian habitat will consist of native shrub planting and installation of a visual barrier (two-strand wire fence). In addition, noxious weeds in the enhancement area will be controlled with an herbicide at least 4 weeks prior to any native grass seeding efforts. Measures will be taken during construction to minimize impact to the habitat, including monitoring, worker education/awareness of Preble's habitat, and the use of silt fencing to reduce the amount of sediment from construction activities that reaches the creek. All of the proposed mitigation area is within the boundaries of the Facility, all of which is included in the drainage basin of Jackson Creek.

The Service has made a preliminary determination that approval of the LEHCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1, and 516 DM 6, Appendix 1) and as a ''low-effect'' plan as defined by the Habitat Conservation Planning Handbook (November 1996). Determination of LEHCPs is based on the following three criteria—(1) Implementation of the LEHCP would result in minor or negligible effects on federally listed, proposed, and

candidate species and their habitats; (2) implementation of the LEHCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the LEHCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

Based on this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination whether to prepare such additional documentation.

This notice is provided pursuant to section 10(c) of the ESA. We will evaluate the permit application, the LEHCP, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the ESA. If the requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with the construction of the sanitary sewer line and nonpotable water reuse line extensions and new access road. The final permit decision will be made no sooner than 30 days after the date of this notice.

Dated: January 31, 2005.

Richard A. Coleman,

Acting Regional Director, Denver, Colorado.

[FR Doc. 05–2850 Filed 2–14–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Construction of a Single-Family Home in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Steven J. Therrien (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking about 0.24 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly nesting habitat incidental to lot preparation for the construction of a single-family home and supporting infrastructure in Brevard County, Florida (Project). The destruction of 0.24 acre of foraging, sheltering, and possibly nesting habitat is expected to result in the take of one family of scrub-jays.

The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. We have determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). We announce the availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (*see* **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (*see* **ADDRESSES**) and should be received on or before March 17, 2005.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office at the address below. Please reference permit number TE093117–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912 (Attn: Field Supervisor).

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, Southeast Regional Office (*see* **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (*see* **ADDRESSES** above), telephone: 904–232–2580, ext. 126.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE093117–0 in such comments. You may mail comments to the Service's Southeast Regional Office (*see* **ADDRESSES**). You may also comment via the internet to *david_dell@fws.gov.* Please submit comments over the internet as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to either Service office listed above (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (mostly consisting of oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal east-central Florida occurs proximal to the current shoreline and larger river basins. Much of this area of Florida was settled early because

few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains of scrub-jay habitat is largely degraded due to the interruption of the natural fire regime, which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Residential construction is proposed on Lot 8, Block 59, Unit 3, in Section 23, Township 23 South, Range 35 East, City of Port St. John, Brevard County, Florida. Lot 8 is immediately adjacent to Lot 7, on which a scrub-jay was observed by Brevard County staff in 2001–2002, and it is also part of territory cluster polygons mapped in 1999 and 2003. The project site is situated in the southern end of an area supporting a 47-family cluster of birds. Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely result in further reductions in the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat as fire exclusion slowly results in vegetative overgrowth. Thus, over the long term, scrub-jays within the City of Port St. John are unlikely to persist in urban settings, and conservation efforts for this species should target acquisition and management of large parcels of land outside the direct influence of urbanization.

Construction of the Applicant's single-family residence and infrastructure will result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential construction will reduce the availability of foraging, sheltering, and possible nesting habitat for one family of scrub-jays. The Applicant proposes to conduct construction activities outside of the nesting season. Other on-site minimization measures are not practicable as the footprint of the home, infrastructure, and landscaping on the 0.24-acre lot will utilize all the available land area. Retention of scrub-jay habitat on site may not be a biologically viable alternative because of increasing negative demographic effects caused by urbanization.

The Applicant proposes to mitigate for the loss of 0.24 acre of scrub-jay habitat by contributing $3,216 to the Florida Scrub-jay Conservation Fund administered by the National Fish and Wildlife Foundation. Funds in this account are earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The $3,216 is sufficient to acquire and perpetually manage 0.48 acre of suitable occupied scrub-jay habitat based on a replacement ratio of two mitigation acres per one impact acre. The cost is based on previous acquisitions of mitigation lands in southern Brevard County at an average $5,700 per acre, plus a $1,000-per-acre management endowment necessary to ensure future management of acquired scrub-jay habitat.

We have determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis, and does not require the preparation of an EA or EIS. This preliminary information may be revised based on public comment received in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies as a low-effect plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Florida scrub-jay population as a whole. We do not anticipate significant direct or cumulative effects to the Florida scrub-jay population as a result of the construction project.

2. Approval of the HCP would not have adverse effects on known unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We have determined that approval of the Plan qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1, and 516 DM 6, Appendix 1). Therefore, no further NEPA documentation will be prepared.

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Florida scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Pursuant to the June 10, 2004, order in *Spirit of the Sage Council* v. *Norton,* Civil Action No. 98–1873 (D.D.C.), the Service is enjoined from approving new section 10(a)(1)(B) permits or related documents containing ''No Surprises'' assurances until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with the public notice and comment requirements of the Administrative Procedure Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the Service's authority to issue permits with ''No Surprises'' assurances has been reinstated, the Service will not approve any incidental take permits or related documents that contain ''No Surprises'' assurances.

Dated: January 26, 2005.

Sam Hamilton,

Regional Director, Southeast Region.

[FR Doc. 05–2885 Filed 2–14–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Rescission of notice of intent to reassume judicial jurisdiction.

SUMMARY: This notice rescinds the Notice of Intent published by the Bureau of Indian Affairs in the **Federal Register** on April 29, 2003.

DATES: *Effective Dates:* February 15, 2005.

FOR FURTHER INFORMATION CONTACT: Kenneth Reinfeld, Office of Self-Governance and Self-Determination, Office of the Assistant Secretary—

Indian Affairs, 1849 C Street, NW., Mail Stop 4628–MIB, Washington, DC 20240, (202) 208–5734.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs under part 209, Chapter 8, of the Departmental Manual (209 DM 8).

By letter dated August 4, 2004, the Assistant Secretary—Indian Affairs advised the Kaw Nation that the Notice of Intent published by the Bureau of Indian Affairs in the **Federal Register** on April 29, 2003 (68 FR 22728) would be rescinded by publication of a new **Federal Register** notice. The April 20, 2003 notice expressed the intent of the Bureau of Indian Affairs to reassume judicial jurisdiction for the Kaw Nation of Oklahoma and to administer court cases under the Court of Indian Offenses for the Southern Plains Region, until the Kaw Nation reestablished its court. As reflected in and confirmed by the 2004 amendment to the Nation's multi-year funding agreement, the Kaw Nation has operated its court system under its law and order codes and constitution without interruption. The April 20, 2003 notice is hereby rescinded.

Dated: January 27, 2005.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 05–2902 Filed 2–14–05; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180]

Meeting of the Central California Resource Advisory Council

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Friday and Saturday, March 11 and 12, 2005. On Friday, the RAC will meet at the University of California Lindcove Research & Extension Center, 22963 Carson Avenue, Exeter, California 93221, from 8 a.m. to 5 p.m. On Saturday, the RAC will convene at the BLM's Atwell Island office, 3945 Road 38, Alpaugh, California 93201 from 8 a.m. to 2 p.m. There will be a public comment period on Friday, March 11 from 3 p.m. until 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deane Swickard, Field Manager, 63 Natoma Street, Folsom, CA 95630, telephone (916) 985–4474.

SUPPLEMENTARY INFORMATION: The twelve-member Central California Resource Advisory Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues associated with public land management in Central California. At this meeting, agenda topics include an update on the Carrizo Management Plan, and the concept and operation of Atwell Island. The RAC will also hear status reports from the Bakersfield, Bishop, Folsom, and Hollister Field Office Managers.

The meeting is open to the public. The public may present written comments to the Council, and time will be allocated for hearing public comments. Depending on the number of persons wishing to comment and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Charge Code: CA 180–1430–HN.

Dated: January 26, 2005.

D.K. Swickard,

Folsom Field Office Manager.

[FR Doc. 05–2629 Filed 2–14–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–5870–EU]

Notice of Realty Action Competitive Sale of Public Land, Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: A 30 acre public parcel of land located in the Pleasant Valley south of Reno, Washoe County, Nevada, has been examined and found suitable for sale utilizing competitive sale procedures.

DATES: Comments must be submitted by April 1, 2005. Bid deadline is 3 p.m. (PT) April 12, 2005.

ADDRESSES: Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89706.

FOR FURTHER INFORMATION CONTACT: Information regarding the competitive sale instructions, procedures, documents, maps and materials to submit a bid can be obtained at the Carson City Field Office's Public Land Sales Hotline at (775) 885–6111, at *http://www.nv.blm.gov/carson,* or at the public reception desk at the above address from 7:30 a.m. to 4 p.m. Monday—Friday (except Federal holidays).

SUPPLEMENTARY INFORMATION: The following described parcel of public land is proposed for sale:

Mount Diablo Meridian, Nevada

T 17 N, R 20 E, Sec. 18, E½ NE¼ SW¼, NE¼ SE¼ SW¼ totaling 30 acres more or less.

The parcel is being offered through competitive sale pursuant to 43 CFR 2711.3–1. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of October 21,1976 (43 U.S.C. 1701, 1713, 1719). This parcel of public land, south of Reno, Nevada, is being offered for sale through competitive sale sealed bid procedures at not less than the appraised fair market value (FMV) of $297,000. The land is not required for Federal purposes. The disposal (sale) of the parcel would serve the public benefit by making lands available for community expansion and private economic development. As such, these lands meet the criteria for sale under 43 CFR 2710.0–3(a)(2) and (3). The subject land is identified for disposal in the Carson City Consolidated Resource Management Plan adopted in May 2001. By Public Land Order No. 7491, dated July 5, 2001, the land was withdrawn from surface entry and mining, but not from sale, exchange or recreation and public purposes. An appraisal report has been prepared by a certified appraiser to establish the FMV of the parcel.

Patent (title document), will be issued with the following reservation:

A right-of-way thereon for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (43 U.S.C. 945), and will be subject to valid existing rights and the following encumbrances of record:

Those rights for buried communication purposes which have been granted to Nevada Bell by Right-of-Way N–53654 under the Act of October 21, 1976 (Title V, 90 Stat. 2743).

Those rights for highway purposes which have been granted to Nevada Department of Transportation by Right-of-Way CC 018418 under the Act of November 9, 1921 (42 Stat. 212).

The land may also be subject to applications received prior to publication of this Notice if processing the application would have no adverse affect on the appraised fair market value (FMV).

Encumbrances of record, the appraisal, and other information are available for review 7:30 a.m. to 4 p.m., PT, Monday through Friday (except Federal holidays), at the Bureau of Land Management (BLM), Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701.

No warranty of any kind shall be given or implied as to the potential use of the land offered for sale. In the event of a sale, the unreserved mineral interests will be conveyed simultaneously with the sale of the land. The unreserved mineral interests have no known mineral value. Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests pursuant to Section 209 of the Federal Land Policy and Management Act of 1976. The purchaser will be required to pay a $50.00 non-refundable filing fee for conveyance of the available mineral interests with the final payment.

The purchaser/patentee, by accepting patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present or future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party arising out of or in connection with the patentee's use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations that are now or in the future become, applicable to the real property; (2) judgments, claims or demands of any kind assessed against the United States; (3) costs, expenses, or damages of any kind incurred by the United States; (4) releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property, and other interests of the United States; (5) other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Deadline for submission of sealed bids is 3 p.m. (PT) April 12, 2005. Bids must be for not less than the FMV of the parcel. Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than 10 (ten) percent of the amount bid.

Bidders are to use regular size 10 business envelopes addressed to BLM at the address indicated above. All bidders are to print their name and return address in the upper left-hand corner of the envelope, and write the BLM Serial Number (N–77726) for the property in the lower front left-hand corner of the envelope.

The purchaser must remit the remainder of the purchase price (plus the $50.00 filing fee for conveyance of mineral interests) within 180 days from the date of the sealed bid opening. Final payment must be by certified check, postal money order, bank draft, cashiers check, or wire transfer payable to the Bureau of Land Management. Failure to pay the full price within the 180 days calendar days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM. BLM offers no financing on the property being offered for sale. Upon the publication of this notice and until the completion of this sale, the BLM is no longer accepting land use applications affecting the parcel being offered for sale.

BLM in its sole discretion reserves the right to: (1) Reject any bid; (2) ask for supplemental bids in the case of identical bids; (3) make minor exceptions to procedures to resolve administrative or other conflicts; and (4) withdraw the property from sale or postpone the sale due to protests, appeals, litigation, administrative or other reasons.

If not sold, the parcel described above in this notice may be identified for sale at a later date without further legal notice.

Federal law requires bidders to be U.S. citizens 18 years of age or older, a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property, or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the laws of the State of Nevada.

To determine the appraised fair market value of the property, the BLM had to make a number of assumptions regarding the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. These assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States regarding the potential uses of the subject land, and conveyance of the land will not be on a contingency basis. It is the buyer's responsibility to be knowledgeable of the subject land and to be aware of all applicable local government policies and regulations that would affect the sale parcel. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of Federal ownership, the land(s) will be subject to any applicable reviews and approvals by units of local government for proposed future uses, and any such reviews and approvals would be the buyer's responsibility. Any land lacking access from a public road or highway will be conveyed as such, and the future acquisition will be the responsibility of the buyer.

For complete details regarding the terms and conditions of the competitive sale interested parties and or bidders shall obtain and read carefully the Sealed Bid Terms and Conditions for this sale. For a period until April 1, 2005, interested parties may submit comments to the Carson City Field Office at the above address. Any comments are to be in letter format citing specific reasons for your objection and are to be addressed and mailed to Donald T. Hicks, Field Manager, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701. Facsimiles, telephone calls, and e-mails are unacceptable means of notification. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of the Interior.

Dated: January 20, 2005.

Charles P. Pope,

Acting Manager, Carson City Field Office.

[FR Doc. 05–2932 Filed 2–10–05; 4:08 pm]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed authority for the collection of information relating to 30 CFR part 872, Abandoned mine reclamation funds.

DATES: Comments on the proposed information collection must be received by April 18, 2005 to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies the information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR 872, Abandoned mine reclamation funds. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Abandoned mine reclamation funds, 30 CFR part 872.

OMB Control Number: 1029–0054.

Summary: 30 CFR 872 establishes a procedure whereby States and Indian tribes submit written statements announcing the State/Tribe's decision not to submit reclamation plans, and therefore, will not be granted AML funds.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and Tribal abandoned mine land reclamation agencies.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Dated: February 10, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–2912 Filed 2–14–05; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review Records and Reports of Registrants

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 213, page 64323 on November 4, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 17, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records and Reports of Registrants.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-profit institutions, federal government, state, local or tribal government. Abstract: This information is needed to maintain a closed system of distribution by requiring the individual practitioner to keep records of the dispensing and administration of controlled substances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimated total number of respondents is 101,000. The

estimated time for each practitioner to maintain the necessary records is 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* This information collection creates an annual burden of 50,500 hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530

Dated: February 9, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–2823 Filed 2–14–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 16, 2004, Clariant LSM (Missouri) Inc., 2460 W. Bennett Street, (or P.O. Box 1246, zip: 65801), Springfield, Missouri 65807–1229, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The company plans to manufacture the listed controlled substance in bulk for research purposes.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register. Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than April 18, 2005.

Dated: February 9, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–2880 Filed 2–14–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Mississippi Lignite Mining Company

[Docket No. M–2005–003–C]

Mississippi Lignite Mining Company, Rt. 3 Box 98, Ackerman, Mississippi 39735 has filed a petition to modify the application of 30 CFR 77.803 (Fail safe ground check circuits on high-voltage resistance grounded systems) to its Red Hills Mine (MSHA I.D. No. 22–00690) located in Choctaw County, Mississippi. The petitioner requests a modification of the existing standard to allow an alternative method of compliance when raising or lowering the boom mast at construction sites during initial Dragline assembly. This method would only be used during the boom mast raising or lowering, and the machine will not be performing mining operations when raising or lowering the boom for construction or maintenance. The procedure would also be applicable in instances of disassembly or major maintenance which require the boom to be raised or lowered. The petitioner has listed specific guidelines in this petition that would be followed to minimize the potential for electrical power loss during this critical boom procedure. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Lone Mountain Processing, Inc.

[Docket No. M–2005–004–C]

Lone Mountain Processing, Inc., Drawer C, St. Charles, Virginia 24282 has filed a petition to modify the application of 30 CFR 75.901 (Protection of low- and medium-voltage three-phase circuits used underground) to its Clover Fork Mine (MSHA I.D. No. 15–18647) located in Harlan County, Kentucky. The petitioner proposes to use a 480-volt, three-phase, 300KW/375KVA diesel powered generator (DPG) set to supply power to a three-phase wye connected 300 KVA autotransformer and three-phase, 480-volt and 995-volt power circuits. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. R S & W Coal Company, Inc.

[Docket No. M–2005–005–C]

R S & W Coal Company, Inc., 207 Creek Road, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.332(b)(1) & (b)(2) (Working sections and working places) to its R S & W Drift Mine (MSHA I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of air passing through inaccessible abandoned workings and additional areas not examined under 30 CFR 75.360, 30 CFR 75.361, and 30 CFR 75.364, to ventilate the only active working section provided the air meets the required quality specified in 30 CFR 75.321(a). This will ensure the maintenance of air quality by alternative methods of compliance through the sampling of section intake air at the gangway level during pre-shift, and on-shift examinations to test for carbon dioxide, methane, and oxygen deficiency and to suspend mine production when air quality contains more than 0.5 percent methane and 0.25 percent carbon dioxide. The petitioner has listed in this petition specific terms and conditions that would be followed when using its alternative method. The petitioner states that records will be maintained of all examinations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Eastern Associated Coal Corp.

[Docket No. M–2005–006–C]

Eastern Associated Coal Corp., HCR 78, Box 113, Wharton, West Virginia 25208 has filed a petition to modify the application of 30 CFR 75.1711–1 (Sealing of shaft openings) to its Harris Mine (MSHA I.D. No. 46–01271) located in Boone County, West Virginia. The petitioner proposes to use an alternative method of compliance to seal and abandon the Bandy Branch bleeder/drainage shaft at the Harris No. 1 Mine using specific terms and conditions listed in the petition. The petitioner asserts that to completely fill the shaft would not be practical due to the relatively small opening left in the previous cap; that attempts to backfill the shaft with soil/rock materials would likely result in bridging of the materials

at the opening and incomplete backfilling of the shaft and future settlement and/or shifting of the material could lead to unintentional venting of mine gases. The petitioner further states that capping and venting the shaft would not be practical due to the mine spoil placement activities associated with the valley fill. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via Federal eRulemaking Portal: *http://www.regulations.gov;* e-mail: *Comments@MSHA.gov;* Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before March 17, 2005. Copies of these petitions are available for inspection at that address.

Dated in Arlington, Virginia this 9th day of February 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 05–2882 Filed 2–14–05; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Ad Hoc Subcommittee Meeting on Early Site Permit Applications; Notice of Meeting

The ACRS Ad Hoc Subcommittee on Early Site Permit Applications will hold a meeting on March 2, 2005, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Wednesday, March 2, 2005—1 p.m. until 5 p.m.

The Subcommittee will review and discuss the North Anna Draft Safety Evaluation Report for early site permit, and the industry proposed plant parameter envelope information. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and Dominion Nuclear regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Medhat M. El-Zeftawy (telephone 301–415–6889) between 7:30 a.m. and 5 p.m. (e.t.) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 5 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: February 9, 2005.

John H. Flack,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. 05–2855 Filed 2–14–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of February 14, 21, 28, March 7, 14, 21, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Weeks of February 14, 2005

Tuesday, February 15, 2005

9:30 a.m. Briefing on Office of Nuclear Material Safety and Safeguards Programs, Performance, and Plans—Waste Safety (Public Meeting) (Contact: Jessica Shin, 301–415–8117).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of February 21, 2005—Tentative

Tuesday, February 22, 2005

9:30 a.m. Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Patricia Wolfe, 301–415–6031).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Briefing on Emergency Preparedness Program Initiatives (Closed—Ex. 1).

Wednesday, February 23, 2005

9:30 a.m. Briefing on Status of Office of Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Edward New, 301–415–5646).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, February 24, 2005.

1 p.m. Briefing on Nuclear Fuel Performance (Public Meeting) (Contact: Frank Akstulewicz, 301–415–1136).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of February 28, 2005—Tentative

There are no meetings scheduled for the Week of February 28, 2005.

Week of March 7, 2005—Tentative

Monday, March 7, 2005

10 a.m. Briefing on Office of Nuclear Material Safety and Safeguards Programs, Performance, and Plans—Materials Safety (Public Meeting) (Contact: Shamica Walker, 301–415–5142).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of March 14, 2005—Tentative

Wednesday, March 16, 2005

9:30 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Weeks of March 21, 2005—Tentative

There are no meetings scheduled for the Week of March 21, 2005.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

Additional Information: ''discussion of Security Issues (Closed—Ex. 1).'' originally scheduled for Thursday, February 24, 2005, at 9 a.m. was canceled.

The NREC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodations to individuals with disability where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g.

braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodations will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 10, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05–2952 Filed 2–11–05; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 20, 2005, through February 3, 2005. The last biweekly notice was published on February 1, 2005 (70 FR 5233).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible

effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by email to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)-(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by email to *pdr@nrc.gov.*

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina; Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina; Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendments request: November 17, 2004.

Description of amendments request: The requested change would delete Technical Specification (TS) 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4, ''Monthly Operating Reports,'' for the Brunswick and H. B. Robinson plants. The equivalent change is being requested for the Shearon Harris facility by deleting TS 6.9.1.2.a and TS 6.9.1.2.c under ''Annual Reports'' and TS 6.9.1.5, ''Monthly Operating Reports.''

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated November 17, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the Technical Specifications (TS) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant, add any new

equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve a significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Michael L. Marshall.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: January 5, 2005.

Description of amendment request: The proposed amendments would revise the Technical Specification (TS) 5.5.19 associated with the Lee Combustion Turbine (LCT) testing program. TS 5.5.19.b currently requires verification that an LCT can supply the equivalent of one Unit's maximum safeguard loads, plus two Units' Mode 3 loads, when connected to the system grid every 12 months. In the proposed amendments, this requirement would be more clearly specified as ''plus two Units' safe shutdown loads.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Duke proposes to revise TS 5.5.19.b to clarify the Lee Combustion Turbine (LCT) testing requirements. The proposed change makes the wording of the test requirement consistent with the UFSAR [Updated Final Safety Analysis Report] and the original wording of the TS requirement before administrative changes were made in Amendment 232, 232, 231, and Amendment 300, 300, and 300. LCT testing has no impact on the probability of an accident analyzed in the UFSAR. The LCT can be credited to mitigate the consequences of an accident analyzed in the UFSAR. However, this clarification of LCT testing requirements has no impact on its ability to mitigate the consequences of an accident. As such, the proposed LAR [license amendment request] does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

Duke proposes the revise TS 5.5.19.b to clarify the Lee Combustion Turbine (LCT) testing requirements. The proposed change makes wording of the test requirement consistent with the UFSAR and the original wording of the TS requirement before administrative changes were made in Amendment 232, 232, 231, and changes were made in Amendment 300, 300, and 300. These changes do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed TS change does not unfavorably affect any plant safety limits, set points, or design parameters. The changes also do not unfavorably affect the fuel, fuel cladding, RCS [reactor coolant system], or containment integrity. Therefore, the proposed TS change, which clarifies TS requirements associated with the LCT testing program, does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottingham, Winston and Strawn LPP, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: July 29, 2004.

Description of amendment request: The proposed amendment would delete the requirements from the technical specifications (TS) to maintain a hydrogen dilution system, a hydrogen purge system, and hydrogen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. The revised Title 10 of the *Code of Federal Regulations* (10 CFR) section 50.44, ''Combustible gas control for nuclear power reactors,'' eliminated the requirements for hydrogen recombiners and related vent and purge systems and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of availability of a model no significant hazards consideration determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model no significant hazards consideration determination in its application dated July 29, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The NRC has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. Category 1 in RG 1.97 is intended for key variables that most directly indicate

the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44, the NRC found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the severe accident management guidelines, the emergency plan, the emergency operating procedures, and site survey monitoring that support modification of emergency plan protective action recommendations.

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from the TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The elimination of the hydrogen recombiner [dilution/purge system for Davis Besse] requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner [dilution/purge system for Davis Besse] and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner [dilution/purge system for Davis Besse] and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner [dilution/purge system for Davis Besse] requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The NRC has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Gene Y. Suh.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: December 20, 2004.

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.9.2, ''Refueling Operations—Instrumentation,'' concerning source range neutron flux monitors to be consistent with Improved Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The changes affect the Limiting Condition for Operation [LCO] for Refueling Operations—Instrumentation, in particular, the LCO sections pertaining to the source range neutron flux detectors will be changed to be more like the corresponding sections in the Improved Standard Technical Specifications. The source range neutron flux detectors have no control functions and are therefore not accident initiators. Consequently, the proposed changes will have no impact on the probability of any accident previously evaluated. The detectors are not credited in mitigating the consequences of any accident; therefore, the proposed changes will have no impact on the consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes affect the Limiting Condition for Operation for Refueling Operations—Instrumentation, in particular, the source range neutron flux detectors. The source range neutron flux detectors will continue to operate in the same manner as previously considered. Accident initial conditions and assumptions remain as previously analyzed.

The proposed changes do not introduce any new or different accident initiators. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The changes affect the Limiting Condition for Operation for Refueling Operations—Instrumentation; in particular, the source range neutron detectors. These detectors have no control functions, and are not credited in mitigating the consequences of any accident. The source range neutron detectors are not associated with a safety limit. In addition, the proposed changes to TS will not result in design changes to the source range neutron detectors or in changes to how the source range detectors are used. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Gene Y. Suh.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: January 5, 2005.

Description of amendment request: The license amendment would revise Technical Specification 3/4.3.2.1, ''Safety Features Actuation System [SFAS] Instrumentation,'' to permit a single inoperable SFAS functional unit to be placed in a bypassed condition indefinitely.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would permit a single SFAS instrument string functional unit to be placed in bypass indefinitely. The primary function of SFAS is to monitor station conditions and actuate the engineered safety features when needed in order to prevent or limit fission product and energy release from the core, to isolate the containment vessel, and to initiate the operation of the Engineered Safety Features (ESF) equipment in the event of a loss-of-coolant accident (LOCA).

The SFAS is a possible accident initiator in that an inadvertent system level actuation could result in a transient or accident. The existing Technical Specification requirements for SFAS allow operation indefinitely with a single SFAS functional unit in trip, which results in a 1-out-of-3 channel logic. In this condition, the spurious actuation in one of the three remaining corresponding functional unit would result in an inadvertent system level actuation. Under the proposed change, indefinite operation in a 2-out-of-3, 1-out-of-3, or 1-out-of-2 channel logic would be allowed. The likelihood of a spurious system level actuation for any of the configurations allowed under the proposed change is no greater than the likelihood of spurious actuation under the 1-out-of-3 channel logic allowed under the existing Technical Specification requirements. Therefore, operation of the SFAS actuation from that permitted by the existing Technical Specifications.

Under the proposed change, the SFAS will continue to perform this function with a high level of reliability. The proposed change would allow operation of the SFAS in a condition with reduced redundancy from what is currently required by the Technical Specifications. Operation of the SFAS with reduced redundancy was evaluated against the design criteria to which the system was designed. The design criteria applicable to the SFAS, including the single failure criterion, continue to be met. The proposed change does not prevent the SFAS from mitigating the consequences of previously analyzed accidents.

The proposed change would not increase the likelihood of an inadvertent SFAS actuation. The proposed change would not prevent the SFAS from mitigating the consequences of previously analyzed accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the SFAS design function or the manner in which that function is performed. Under the proposed change, the SFAS will continue to perform its function with a high degree of reliability. No new failure modes or accident initiators are created by the proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change would allow operation of the SFAS in a condition with reduced redundancy from what is currently required by the Technical Specifications. Operation of the SFAS with reduced redundancy was evaluated against the design criteria to which the system was designed. This evaluation shows that with the SFAS in the conditions permitted by the proposed change, the SFAS still satisfies all the applicable design criteria, including the single failure criterion. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Gene Y. Suh.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: January 11, 2005.

Description of amendment request: The proposed amendment would revise the Updated Safety Analysis Report (USAR) by modifying the design requirements for protection from tornado missiles. Specifically, the proposed amendment would allow certain structures, systems, and components that are not currently provided with physical protection from tornado-induced missiles to be evaluated for acceptability based on the Electrical Power Research Institute ''Tornado Missile Risk Evaluation Methodology'' (TORMIS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would reflect use of the Electric Power Research Institute (EPRI) Topical Report ''Tornado Missile Risk Evaluation Methodology'' (EPRI NP–2005), Volumes I and II. As noted in the NRC Safety Evaluation on this report dated October 26, 1983, ''The current licensing criteria governing tornado missile protection are contained in Standard Review Plan (SRP) Sections 3.5.1.4 and 3.5.2. These criteria generally specify that safety-related systems be provided positive tornado missile protection (barriers) from the maximum credible tornado threat. However, SRP Section 3.5.1.4 includes acceptance criteria permitting relaxation of the above deterministic guidance, if it can be demonstrated that the probability of damage to unprotected essential safety-related features is sufficiently small.''

''Certain Operating License (OL) applicants and operating reactor licensees have chosen to demonstrate compliance with tornado missile protection criteria for certain portions of the plant * * * by providing a probabilistic analysis which is intended to show a sufficiently low risk associated with tornado missiles. Some* * * have utilized the tornado missile probabilistic risk assessment (PRA) methodology developed by'' EPRI in the Topical Report listed above. The NRC noted that this report ''can be utilized when assessing the need for positive tornado missile protection for specific safety-related plant features.'' This methodology has subsequently been utilized in nuclear power plant licensing actions.

As permitted in NRC Standard Review Plan (NUREG–0800) sections, the total probability will be maintained below an allowable level, *i.e.*, an acceptance criteria threshold, which reflects an extremely low probability of occurrence. The DBNPS [Davis-Besse Nuclear Power Station] approach assumes that if the probability calculation result for the total plant identifies that the cumulative probability of tornado missiles striking an unprotected portion of a safety system or component required for safe shutdown in the event of a tornado exceeds 10^{-6} per year, then unique missile barriers would need to be installed to lower the total probability below the acceptance criteria of 10^{-6} per year.

With respect to the probability of occurrence of an accident previously evaluated in the USAR, the possibility of a tornado reaching the DBNPS site and causing damage to plant structures, systems, and components is an event considered in the USAR. The changes being proposed herein do not affect the probability that the natural phenomena (a tornado) will reach the plant, but they do, from a licensing basis perspective, affect the probability that missiles generated by the winds of the tornado might strike certain plant systems or components. As recently determined, there are a limited number of safety-related components that could theoretically be struck by a tornado generated missile. The

total (cumulative) probability of a tornado missile striking an unprotected component will be maintained below an extremely low acceptance criteria to ensure overall plant safety. Due to the extremely low probability of a tornado missile impacting an essential component, the small increase in the probability of accident initiation is not considered significant.

With respect to the consequences of an accident previously evaluated, there is an extremely low probability of a malfunction of an unprotected essential component due to tornado missile impact. Due to (1) the extremely low probability of a tornado missile striking essential equipment as calculated by TORMIS, and (2) the low probability that any tornado missile strikes would cause sufficient damage to prevent essential equipment from performing its accident-mitigating function, a loss of accident mitigation capability is not considered credible. Therefore, the radiological consequences of accidents are not significantly affected.

The proposed change is not considered to constitute a significant increase in the probability of occurrence or the consequences of an accident, due to the extremely low total probability of a tornado missile strike and thus an extremely low probability of a radiological release. Therefore, the proposed change does not involve a significant increase in the probability or consequences of previously evaluated accidents.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The possibility of a tornado reaching the DBNPS site is a design basis event considered in the USAR. This change involves recognition of the acceptability of performing tornado missile probability calculations in accordance with established regulatory guidance. The change therefore deals with an established design basis event (the tornado). Therefore, the proposed change would not contribute to the possibility of a new or different kind of accident from those previously analyzed.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This request does not involve a significant reduction in a margin of safety. The existing licensing basis for the DBNPS with respect to the design basis event of a tornado reaching the plant is to provide positive missile barriers for all systems and components required for safe shutdown in the event of a tornado. With the change, it will be recognized that there is an extremely low probability, below an established acceptance limit, that a limited subset of these systems and components could be struck. The change to missile protection based on extremely low probability (less than 1×10^{-6} per year cumulative strike probability) of occurrence of tornado generated missile strikes on portions of these systems and components is not considered to constitute a significant decrease in the margin of safety due to that extremely low probability. Therefore, the changes associated with this license amendment do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Gene Y. Suh.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: September 10, 2004.

Description of amendment request: The proposed amendment would delete the requirements from the technical specifications (TS) to maintain hydrogen recombiners and hydrogen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. The revised Title 10 of the *Code of Federal Regulations* (10 CFR) section 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' eliminated the requirements for hydrogen recombiners and related vent and purge systems and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model no significant hazards consideration determination in its application dated September 10, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. Category 1 in RG 1.97 is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the severe accident management guidelines, the emergency plan, the emergency operating procedures, and site survey monitoring that support modification of emergency plan protective action recommendations.

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from the TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Gene Y. Suh.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: November 17, 2004.

Description of amendment request: The requested change would delete Technical Specification (TS) 5.7.1.1.a, ''Occupational Radiation Exposure Report,'' and TS 5.7.1.2, ''Monthly Operating Reports.''

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated November 17, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the Technical Specifications (TS) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve a significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Michael L. Marshall.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: August 6, 2004.

Description of amendment request: The proposed amendment deletes the requirements from the Technical Specifications (TSs) to maintain hydrogen recombiners and hydrogen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated August 6, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. Category 1 in RG 1.97 is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the severe accident management guidelines (SAMGs), the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

NRC Section Chief: Richard J. Laufer.

Nine Mile Point Nuclear Station, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (NMP1 and NMP2), Oswego County, New York

Date of amendment request: January 24, 2005.

Description of amendment request: The licensee proposed amendments to delete Sections 6.6.1 and 5.6.1, ''Occupational Radiation Exposure Report,'' and Sections 6.6.4 and 5.6.4, ''Monthly Operating Reports,'' from the NMP1 and NMP2 Technical Specifications, respectively. The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated January 24, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration by referencing the model NSHC analysis published by the NRC staff. The model NSHC analysis is reproduced below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the Technical Specifications (TSs) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: October 28, 2004.

Brief description of amendments: The proposed amendment deletes the requirements from the Technical Specifications (TS) to maintain hydrogen recombiners and hydrogen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated October 28, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. Category 1 in RG 1.97 is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the severe accident management guidelines (SAMGs), the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Michael K. Webb (Acting).

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 4, 2004.

Description of amendment request: The proposed changes would relocate the inservice testing requirements, remove the inservice inspection requirements, and add a Bases Control Program to the Administrative Controls section of the Technical Specifications (TS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Surry Units 1 and 2 in accordance with the proposed Technical Specifications change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is administrative in nature, and station operations are not being affected. The ASME [American Society of Mechanical Engineers] Code requirements are established, reviewed and approved by ASME, the industry and ultimately endorsed by the NRC for inclusion into 10 CFR 50.55a. Updates to the ASME Code reflect advances in technology and consider information obtained from plant operating experience to provide enhanced inspection and testing. Thus, the proposed change only modifies TS to appropriately reference the recently NRC approved Inservice Testing Program for the fourth interval at Surry Power Station. Consequently, the probability or consequences of an accident previously evaluated are not increased.

2. The proposed Technical Specifications change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As noted above, the proposed change is administrative in nature, and no new accident precursors are being introduced. Since the inservice testing will continue to be performed in accordance with an NRC approved program, adequate assurance is provided to ensure the safety-related pumps and valves would operate as required. No new testing is required that could create a new or different type of accident. Consequently, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed Technical Specifications change does not involve a significant reduction in a margin of safety.

Performing inservice testing of pumps and valves to the NRC approved program for the fourth interval at Surry Power Station provides adequate assurance that the safety-related pumps and valves will continue to perform their intended safety function. This is an administrative change in nature and as such does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: September 15, 2004.

Brief description of amendment request: In accordance with Technical Specification Task Force (TSTF) 285, Charging Pump Swap Low-Temperature Over-Pressurization Allowance, LCO 3.4.12, Cold Overpressure Mitigation System (COMS), is being revised to modify and relocate two notes in the WBN Technical Specifications. The changes are all administrative, except a change which would allow two charging pumps to be made capable of injecting into the Reactor Coolant System to support pump swap operations for a period not to exceed one hour instead of the currently allowed 15 minutes.

Date of publication of individual notice in ***Federal Register:*** February 1, 2005 (70 FR 5226).

Expiration date of individual notice: March 3, 2005 (public comments) and April 4, 2005 (hearing requests).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209,

(301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application of amendment: September 30, 2003.

Description of amendment request: The amendment modifies Technical Specification (TS) 4.3.1, ''Criticality,'' adds TS 3.7.16, ''Spent Fuel Pool Boron Concentration,'' and adds TS 3.7.17, ''Spent Fuel Pool Storage.'' Specifically, the amendment increases the maximum enrichment limit of the fuel assemblies that can be stored in the Unit 2 spent fuel pool by taking credit for soluble boron, burnup, and configuration control in maintaining acceptable margins of subcriticality.

Date of issuance: January 27, 2005.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 246.

Renewed License No. DPR–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 20, 2004 (69 FR 2739).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 2005.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 26, 2004, as supplemented January 26, 2005.

Brief description of amendments: These amendments revise the Technical Specifications by eliminating the requirements associated with hydrogen and oxygen monitors.

Date of issuance: February 2, 2005.

Effective date: As of its date of issuance, and shall be implemented within 120 days.

Amendment Nos.: 234 and 261.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 31, 2004 (69 FR 53100). The January 26, 2005, supplement contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 2, 2005.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: February 25, 2003, as supplemented June 9, and July 30, 2003, and September 13, 2004.

Brief description of amendments: The amendments revised the Technical Specifications to incorporate a Steam Generator (SG) program that defines a performance-based approach to maintaining SG tube integrity. The SG program includes performance criteria that define the basis for tube integrity and provides reasonable assurance that SG tubing will remain capable of fulfilling its safety function of maintaining reactor coolant system pressure boundary integrity. The proposed amendments add a new TS for SG tube integrity (3.4.18) and revise the TS for reactor coolant operation leakage (3.4.13), SG tube surveillance program (5.5.9), and SG tube inspection report (5.6.8).

Date of issuance: January 13, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 218 and 212.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 8, 2003 (68 FR 40712).

The supplements dated June 9, and July 30, 2003, and September 13, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 13, 2005.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 18, 2004.

Brief description of amendments: The amendments revised the Technical Specifications to remove references to Safety Injection Steam Line Pressure-Low.

Date of issuance:

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 224 and 206.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 9, 2004 (69 FR 64987).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 27, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Date of application for amendments: August 15, 2003, as supplemented on April 9, 2004.

Brief description of amendments: The amendments revise Technical Specification (TS) 3.4.15, ''RCS Leakage Detection Instrumentation'', to require one containment sump monitor and one containment atmosphere particulate radioactivity monitor to be operable in Modes 1, 2, 3, and 4.

Date of issuance: January 14, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 140, 133.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 28, 2003 (68 FR 61477).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 14, 2005.

No significant hazards consideration comments received: No.

Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: December 2, 2003, as supplemented by letters dated September 14 and December 10, 2004, and January 7, 2005.

Brief description of amendment: This amendment revised the Technical Specifications (TSs) to permit operation

with a reduced reactor coolant system flow corresponding to a steam generator (SG) tube plugging level of 30-percent per SG. This amendment also includes the transition to Westinghouse Reload Safety Evaluation Methodology (WCAP–9272).

Date of issuance: January 31, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 138.

Renewed Facility Operating License No. NPF–16: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** March 18, 2004 (69 FR 12873).

The September 14 and December 10, 2004, and January 7, 2005, supplements did not affect the original proposed no significant hazards determination, or expand the scope of the request as noticed in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 2005.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: April 19, 2004, as supplemented on July 16, 2004.

Brief description of amendment: The amendment revised Section 3/4.6.2, ''Protective Instrumentation,'' to establish a 24-month operating cycle calibration frequency for the intermediate range monitor instrumentation. In addition, the amendment authorized relocation of the limiting conditions for operation and surveillance requirements for certain control rod withdrawal block instruments from Section 3/4.6.2 to the Updated Final Safety Analysis Report.

Date of issuance: January 25, 2005.

Effective date: January 25, 2005.

Amendment No.: 186.

Facility Operating License No. DPR–63: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 25, 2004 (69 FR 29769).

The July 16, 2004, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 25, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: October 5, 2004.

Brief description of amendment: The amendment deletes Technical Specification (TS) 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4 ''Monthly Operating Reports,'' as described in the Notice of Availability published in the **Federal Register** on June 23, 2004 (69 FR 35067).

Date of issuance: January 31, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 256.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 9, 2004 (69 FR 64989).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: January 30, 2004.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) to (1) clarify the permissive setpoint for the source range monitor detector-not-fully-inserted rod block bypass, (2) correct a typographical error in the surveillance requirement for suppression pool temperature monitoring, (3) clarify the setpoint for the pressure suppression chamber-reactor building vacuum breakers instrumentation, (4) clarify the operating force requirements for the pressure suppression chamber-drywell vacuum breakers surveillance test, and (5) make corrections resulting from license Amendments 130 and 132.

Date of issuance: January 28, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 141.

Facility Operating License No. DPR–22. Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** April 13, 2004 (69 FR 19573).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: October 5, 2004.

Brief description of amendment: The amendment deletes technical specification (TS) 6.7.A.2, ''Requirement to submit an Occupational Radiation Exposure Report,'' TS 6.7.A.3, ''Requirement to submit a Monthly Operating Report,'' and TS 6.7.A.6, ''Requirement to report safety/relief valve failures and challenges'' as described in the Notice of Availability published in the **Federal Register** on June 23, 2004 (69 FR 35067).

Date of issuance: February 1, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 142.

Facility Operating License No. DPR–22. Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** November 9, 2004 (69 FR 64989).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 1, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: October 5, 2004.

Brief description of amendment: The amendment deletes technical specification 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4 ''Monthly Operating Reports,'' as described in the Notice of Availability published in the **Federal Register** on June 23, 2004 (69 FR 35067).

Date of issuance: January 10, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 220.

Facility Operating License No. DPR–20: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 9, 2004 (69 FR 64989).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 10, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: January 30, 2004.

Brief description of amendment: The amendment eliminates requirements for hydrogen recombiners and relocates the requirements for hydrogen monitors to the licensee's Commitment Management Program.

Date of issuance: January 11, 2005.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 221.

Facility Operating License No. DPR–20: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 2, 2004 (69 FR 9862).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: October 5, 2004.

Brief description of amendments: The amendments delete technical specification (TS) 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4 ''Monthly Operating Reports,'' as described in the Notice of Availability published in the **Federal Register** on June 23, 2004 (69 FR 35067).

Date of issuance: January 31, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 168, 158.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 9, 2004 (69 FR 64989).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 31, 2005.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 13, 2004, as supplemented by letters dated November 5 and December 10, 2004.

Brief description of amendments: The amendments revise Technical Specifications (TSs) 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' and 3.3.6, ''Containment Ventilation Isolation Instrumentation,'' to adopt the completion time, test bypass time, and surveillance frequency time changes approved by the NRC in Topical Reports WCAP–14333–P–A, ''Probabilistic Risk Analysis of the RPS [reactor protection system] and ESFAS Test Times and Completion Times,'' and WCAP–15376–P–A, ''Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times.'' The amendments revise the required actions for certain action conditions; increase the completion times for several required actions (including some notes); delete notes in certain required actions; and increase frequency time intervals (including certain notes) in several surveillance requirements.

Date of issuance: January 31, 2005.

Effective date: January 31, 2005, and shall be implemented within 180 days of the date of issuance.

Amendment Nos.: Unit 1—179; Unit 2—181.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 30, 2004 (69 FR 16622). The supplemental letters dated November 5 and December 10, 2004, provided clarifying information that did not change the scope of the original application as noticed or the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 31, 2005.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendments: April 26, 2004, as supplemented by letters dated August 17 and September 7, 2004.

Brief description of amendments: The amendment revised the Technical Specification Section 5.5.12, ''Primary Containment Leakage Rate Testing Program'' to reflect a one-time deferral of the Type A Containment Integrated Leak Rate Test (ILRT). This change extends the 10-year interval between ILRTs to 15 years from the previous ILRT.

Date of issuance: February 1, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 187.

Renewed Facility Operating License No. NPF–5: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 3, 2004 (69 FR 46591).

The supplements dated August 17 and September 7, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 1, 2005.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: December 17, 2003, as supplemented by letters dated October 28 and November 16, 2004.

Brief description of amendment: The amendment revises TSs 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' and 3.3.9, ''Boron Dilution Mitigation System (BDMS)'' to adopt the completion time, test bypass time, and surveillance time interval changes in NRC-approved WCAP–14333–P–A, ''Probabilistic Risk Analysis of the RPS [reactor protection system] and ESFAS Test Times and Completion Times,'' and WCAP–15376–P–A, ''Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times.'' The TS changes revise required actions for certain action conditions; increase the completion times for several required actions (including some notes); delete notes in certain required actions; increase frequency time intervals (including certain notes) in several surveillance requirements (SRs); add an action condition and required actions; revise notes in certain SRs; and revise Table 3.3.2–1. There is also an administrative correction to the format of the TSs.

Date of issuance: January 31, 2005.

Effective date: January 31, 2005, and shall be implemented within 120 days of its date of issuance.

Amendment No.: 165.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 3, 2004 (69 FR 5211).

The supplemental letters dated October 28 and November 16, 2004, provided clarifying information that did not change the scope of the original application as noticed or the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 2005.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 15, 2003, as supplemented by letters dated October 7 and November 12, 2004.

Brief description of amendment: The amendment revises Technical Specifications (TSs) 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' and 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' to adopt the completion time, test bypass time, and surveillance frequency time changes approved by the NRC in Topical Reports WCAP–14333–P–A, ''Probabilistic Risk Analysis of the RPS [reactor protection system] and ESFAS Test Times and Completion Times,'' and WCAP–15376–P–A, ''Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times.'' The amendment revises the required actions for certain action conditions; increase the completion times for several required actions (including some notes); delete notes in certain required actions; and increase frequency time intervals (including certain notes) in several surveillance requirements.

Date of issuance: January 31, 2005.

Effective date: January 31, 2005, and shall be implemented within 180 days of the date of issuance.

Amendment No.: 156.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 3, 2004 (69 FR 5212).

The supplemental letters dated October 7 and November 12, 2004, provided clarifying information that did not change the scope of the original application as noticed or the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 2005.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 7, 2004.

Brief description of amendment: The amendment revises Section 5.3, ''Unit Staff Qualifications,'' of the technical specifications (TSs) to add the qualification requirements for the shift manager and the control room supervisor. In addition, based on a comparison review performed by the NRC and Wolf Creek Nuclear Operating Corporation personnel, editorial corrections are being made to the TSs.

Date of issuance: January 31, 2005.

Effective date: January 31, 2005, and shall be implemented within 90 days from the date of issuance.

Amendment No.: 159.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 23, 2004 (68 FR 68188).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 2005.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant

hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by email to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services:

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by email to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of amendment request: January 15, 2005.

Description of amendment request: The amendment revises the Operating License to add a license condition to allow a one-time extension of the allowed outage time for the west centrifugal charging pump.

Date of issuance: January 16, 2005.

Effective date: January 16, 2005.

Amendment No.: 285.

Facility Operating License No. DPR–58: Amendment revises the Operating License.

Public comments requested as to proposed no significant hazards consideration (NSHC): No. The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated January 16, 2005.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: M. Kotzalas, Acting.

Dated at Rockville, Maryland, this 7th day of February, 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–2788 Filed 2–14–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft Revision 2 of Regulatory Guide 1.92, entitled ''Combining Modal Responses and Spatial Components in Seismic Response Analysis,'' is temporarily identified by its task number, DG–1127, which should be mentioned in all related correspondence. Like its predecessors, the proposed revision describes methods that the NRC staff finds acceptable for complying with the NRC's regulatory requirements in Criterion 2, ''Design Bases for Protection Against Natural Phenomena,'' as it appears in Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to Title 10, Part 50, of the *Code of Federal Regulations* (10 CFR Part 50). Specifically, Criterion 2 requires, in part, that nuclear power plant (NPP) structures, systems, and components (SSCs) that are important to safety must be designed to withstand the effects of natural phenomena (such as earthquakes) without losing their capability to perform their respective safety functions.

For several decades, the nuclear industry fulfilled Criterion 2 using the response spectrum method and the time history method for seismic analysis and design of NPP SSCs. Then, in 1976, the NRC issued Revision 1 of Regulatory Guide 1.92, which described then-up-to-date guidance for using the response spectrum and time history methods. Since that time, research in the United States has resulted in improved methods that yield more accurate estimates of SSC seismic response, while reducing unnecessary conservatism. In view of those improvements, DG–1127 describes methods that the NRC staff finds acceptable for combining modal responses and spatial components in seismic response analysis. The NRC staff initially published Revision 2 of Regulatory Guide 1.92 as DG–1108, dated August 2001. The staff subsequently considered stakeholders' feedback on DG–1108, and incorporated the necessary changes in DG–1127.

The NRC staff is soliciting comments on Draft Regulatory Guide DG–1127, and specifically on the new regulatory position regarding residual rigid response of the missing mass modes, as described in Sections 1.4 and 1.5 of DG–1127. Comments may be accompanied by relevant information or supporting data. Please mention DG–1127 in the subject line of your comments. Comments on this draft regulatory guide submitted in writing or in electronic form will be made available to the public in their entirety in the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E-mail comments to: *NRCREP@nrc.gov*. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol A. Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about draft regulatory guide DG–1127 may be directed to Dr. T.Y. Chang, at (301) 415–6450 or via e-mail to *TYC@nrc.gov*.

Comments would be most helpful if received by April 15, 2005. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before

this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of the draft regulatory guide are available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML050230006. Note, however, that the NRC has temporarily suspended public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548; and by e-mail to *PDR@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 3rd day of February, 2005.

For the U.S. Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 05–2853 Filed 2–14–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Final Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued a revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 3 of Regulatory Guide 1.75, ''Criteria for Independence of Electrical Safety Systems,'' describes a method that is acceptable to the NRC staff for complying with the NRC's regulatory requirements concerning the physical independence of the circuits and electrical equipment that comprise or are associated with safety systems. Toward that end, the guide endorses, with minor exceptions, the ''Standard Criteria for Independence of Class 1E Equipment and Circuits, which the Institute for Electrical and Electronics Engineers (IEEE) promulgated on June 18, 1992, as IEEE Std. 384–1992.

In December 2003, the NRC staff published a draft of this guide as Draft Regulatory Guide DG–1129. Following the closure of the public comment period on March 12, 2004, the staff considered all stakeholder comments in the course of preparing Revision 3 of Regulatory Guide 1.75.

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Revision 3 of Regulatory Guide 1.75 may be directed to NRC Senior Program Manager, Satish Aggarwal, at (301) 415–6005 or *SKA@nrc.gov.*

Regulatory guides are available for inspection or downloading through the NRC's public Web site in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies of Revision 3 of Regulatory Guide 1.75 are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html,* under Accession #ML043630448. Note, however, that the NRC has temporarily suspended public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by email to *DISTRIBUTION@nrc.gov;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

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(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 2nd day of February, 2005.

For the U.S. Nuclear Regulatory Commission.

John W. Craig,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 05–2854 Filed 2–14–05; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in February 2005. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in March 2005.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Funding Equity Act of 2004, for premium payment years beginning in 2004 or 2005, the required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid. Thus, the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in February 2005 is 4.66 percent (*i.e.*, 85 percent of the 5.48 percent composite corporate bond rate for January 2005 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between March 2004 and February 2005.

For premium payment years beginning in:	The required interest rate is:
March 2004	4.79
April 2004	4.62
May 2004	4.98
June 2004	5.26
July 2004	5.25
August 2004	5.10
September 2004	4.95
October 2004	4.79
November 2004	4.73
December 2004	4.75
January 2005	4.73
February 2005	4.66

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in March 2005 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of February 2005.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–2857 Filed 2–14–05; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—Thursday, March 10, 2005, Thursday, March 17, 2005, Thursday, April 7, 2005, Thursday, April 21, 2005.

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: February 8, 2005.

Mary M. Rose,

Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 05–2811 Filed 2–14–05; 8:45 am]

BILLING CODE 6325–49–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51155; File No. PCAOB–2004–02]

Public Company Accounting Oversight Board; Order Approving Proposed Rule and Amendment No. 1 Amending Bylaws

February 8, 2005.

I. Introduction

On November 12, 2004, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') proposed amendments to its bylaws, as modified by Amendment No. 1 to the proposed amendments, (PCAOB–2004–02) pursuant to Sections 101 and 107 of the Sarbanes-Oxley Act of 2002 (the ''Act''), which clarify existing bylaw provisions and address certain internal operational and administrative matters. Notice of the proposed bylaw amendments was published in the **Federal Register** on January 4, 2005. The Commission received no comment letters relating to the proposed bylaw amendments. For the reasons discussed below, the Commission is granting approval of the proposed bylaw amendments.

II. Description

Section 101(g)(1) of the Act directs the PCAOB to adopt rules to provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under the Act. Pursuant to its organizational and rulemaking authority under the Act, the Board adopted a set of bylaws on January 3, 2003 to establish rules, standards and procedures for the conduct of the PCAOB's business affairs. On April 25, 2003, the Board amended the bylaws to specify the powers of the PCAOB's Chair. The Commission approved the Board's bylaws, as amended, on July 23, 2003. The Board adopted additional amendments to its bylaws on March 9, 2004 to clarify existing provisions and to cause the bylaws to address certain internal operational and administrative PCAOB matters, and submitted the proposed bylaw amendments to the Commission on March 18, 2004. On October 26, 2004, the PCAOB adopted modifications to the proposed amendments, and submitted the proposed amendments, as modified, for Commission approval on November 12, 2004. Pursuant to the requirements of Section 107(b) of the Act and Section 19(b) of the Securities Exchange Act of 1934 (the ''Exchange Act''), the Commission published the proposed amendments, as modified, for public comment on January 4, 2005.

III. Discussion

The Commission received no public comments relating to the PCAOB's proposed amendments to its bylaws. The proposed amendments are intended to revise the PCAOB's bylaws to clarify existing provisions and to cause the bylaws to address certain internal operational and administrative PCAOB matters. The proposed amendments also are generally intended to make the bylaw provisions more consistent with District of Columbia and Internal Revenue Service provisions for nonprofit corporations and to make the Board's operations more transparent.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed amendments to the Board's bylaws are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the proposed bylaw amendments (File No. PCAOB–2004–02) be and hereby are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–604 Filed 2–14–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51150; File No. SR–Amex–2005–017]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Suspension of the Specialist's and Registered Traders' Transaction Charges for the Trading of Nasdaq-100 Index Tracking Stock®

February 8, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, III below, which Items have been prepared by the Exchange. The Amex has designated the proposed rule change as ''establishing or changing a due, fee, or other charge'' under Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules (''Amex Fee Schedules'') to extend the temporary suspension of the specialist's and registered traders' transaction charges for the trading of Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) pursuant to the Nasdaq Unlisted Trading Privileges Plan. The text of the proposed rule change is available on the Amex's Web site (www.amex.com), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock® listed on the Nasdaq Stock Market, Inc. It trades on Nasdaq under the symbol QQQQ. The Amex trades the QQQQ on an unlisted trading privileges basis. The transaction charges for the specialist and registered traders are $0.0037 ($0.37 per 100 shares) and $0.0038 ($0.38 per 100 shares) respectively. These

[1] 1 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 4 17 CFR 240.19b–4(f)(2).

transaction charges are also subject to a $300 per trade maximum. The Amex, however, has suspended these charges through January 31, 2005.[5] The Amex now proposes to amend the Amex Fee Schedules to suspend the transaction charges for the specialist and registered traders until February 28, 2005. The Exchange believes that this fee suspension would encourage competition among markets trading QQQQ and enhance the Amex's competitiveness in trading this security.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it is intended to provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2005–017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–017 and should be submitted on or before March 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–602 Filed 2–14–05; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 50970 (January 6, 2005), 70 FR 2193 (January 12, 2005) (SR–Amex–2004–110).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51152; File No. SR-Amex-2005–016]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Extension of the Suspension of Customer Transaction Charges for the Trading of Nasdaq-100 Index Tracking Stock®

February 8, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules (''Amex Fee Schedules'') to extend the suspension of customer transactions charges for the trading of Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) pursuant to the Nasdaq Unlisted Trading Privileges Plan until February 28, 2005.[3] The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange also submitted a proposed rule change extending the suspension of the specialist's and registered traders' transaction charges for the trading of QQQQ. *See* File No. SR–Amex–2005–017.

statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock® listed on the Nasdaq Stock Market, Inc. It trades on Nasdaq under the symbol QQQQ. The Amex trades the QQQQ on an unlisted trading privileges basis. The Amex amended the Amex Fee Schedules to provide that the customer transaction charges in QQQQ will be $.0015 per share ($.15 per 100 shares), capped at $100 per trade. The Amex, however, has suspended these customer transaction charges through January 31, 2005.[4] The Amex is now proposing to extend the suspension of customer transaction charges until February 28, 2005. The Exchange believes that this fee suspension would encourage competition among markets trading QQQQ and enhance the Amex's competitiveness in trading this security.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, in that it is intended to provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2005–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2005–016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Amex–2005–016 and should be submitted on or before March 8, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the proposed change in customer transaction charges is not unreasonable and should not discriminate unfairly among market participants.

The Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that granting accelerated approval of the proposal would allow the extension of the suspension of customer transactions charges for the trading of QQQQ to coincide with the extension of the suspension of transaction charges for the specialist and registered traders for the trading of QQQQ.[10] Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[11] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.**

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–2005–016) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–603 Filed 2–14–05; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 50969 (January 6, 2005), 70 FR 2191 (January 12, 2005) (SR–Amex–2004–111).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] The Commission changed this sentence to reflect statutory basis for the proposed rule change pursuant to Section 6(b)(4) of the Act, rather than Section 6(b)(5). Telephone conversation between Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, and Theodore S. Venuti, Attorney, Division of Market Regulation, Commission (February 7, 2005).

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* File No. SR–Amex–2005–017, *supra* note 3.

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51148; File No. SR–CBOE–2004–67]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Split Price Priority

February 8, 2005.

On October 21, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its split price priority rule. On December 17, 2004, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on January 3, 2005.[3] The Commission received no comment letters on the proposal.

The proposed rule change would amend the Exchange's rule regarding split price transactions in open outcry generally to permit a member with an order for at least 100 contracts who buys (sells) at least 50 contracts at a particular price to have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price without being required to yield to existing customer interest in the limit order book.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should encourage more aggressive quoting by market makers in competition for large-sized orders, and, in turn, lead to better-priced executions. The Commission notes that the proposed rule change includes interpretive language that clarifies that floor brokers who avail themselves of the split priority rule are obligated to ensure compliance with Section 11(a) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CBOE–2004–67), as amended, be hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–600 Filed 2–14–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50924 (December 23, 2004), 70 FR 128.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51147; File No. SR–CBOE–2005–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., To Permit a Decrease of the Designated Primary Market-Maker Participation Entitlement for Certain Option Classes

February 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2005, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 8.87 to permit the Exchange to decrease the Designated Primary Market-Maker (''DPM'') participation entitlement for certain option classes. The text of the proposed rule change follows. Additions are in *italics.*

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Rule 8.87 Participation Entitlements of DPMs and e-DPMs

(a) Subject to the review of the Board of Directors, the MTS Committee may establish from time to time a participation entitlement formula that is applicable to all DPMs.

(b) The participation entitlement for DPMs and e-DPMs (as defined in Rule 8.92) shall operate as follows:

(1) Generally.

(i) To be entitled to a participation entitlement, the DPM/e-DPM must be quoting at the best bid/offer on the Exchange.

(ii) A DPM/e-DPM may not be allocated a total quantity greater than the quantity that the DPM/e-DPM is quoting at the best bid/offer on the Exchange.

(iii) The participation entitlement is based on the number of contracts remaining after all public customer orders in the book at the best bid/offer on the Exchange have been satisfied.

(2) Participation Rates applicable to DPM Complex. The collective DPM/e-DPM participation entitlement shall be: 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange; and, 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange.

(3) Allocation of Participation Entitlement Between DPMs and e-DPMs. The participation entitlement shall be as follows: If the DPM and one or more e-DPMs are quoting at the best bid/offer on the Exchange, the e-DPM participation entitlement shall be one-half (50%) of the total DPM/e-DPM entitlement and shall be divided equally by the number of e-DPMs quoting at the best bid/offer on the Exchange. The remaining half shall be allocated to the DPM. If the DPM is not quoting at the best bid/offer on the Exchange and one or more e-DPMs are quoting at the best bid/offer on the Exchange, then the e-DPMs shall be allocated the entire participation entitlement (divided equally between them). If no e-DPMs are quoting at the best bid/offer on the Exchange and the DPM is quoting at the best bid/offer on the Exchange, then the DPM shall be allocated the entire participation entitlement. If only the DPM and/or e-DPMs are quoting at the best bid/offer on the Exchange (with no Market-Makers at that price), the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

participation entitlement shall not be applicable and the allocation procedures under Rule 6.45A shall apply.

. . . *Interpretations and Policies:*

.01 Notwithstanding subparagraph (b)(2) above, the Exchange may establish a lower DPM Complex Participation Rate on a product-by-product basis for newly-listed products or products that are being allocated to a DPM trading crowd for the first time. Notification of such lower participation rate shall be provided to members through a Regulatory Circular.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

CBOE Rule 8.87 governs the participation entitlement of DPMs and e-DPMs (the ''DPM Complex''). Rule 8.87(b)(2) states the actual participation entitlement percentages applicable to the DPM Complex, which are tiered to take into account the number of non-DPM Market-Makers also quoting at the best price. The participation entitlement percentages are as follows: 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange; and 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange.

This proposal would allow the Exchange to establish a lower participation right, on a product-by-product basis, for newly-listed options or for options that are being allocated to a DPM for the first time. The Commission has previously approved specialist entitlements as high as 40% (with three or more market-makers also quoting at the same price). This filing merely gives the Exchange the flexibility to implement a lower participation entitlement (something less than 30%) for the DPM Complex if the options are newly-listed or are being allocated to a DPM trading crowd (from a non-DPM trading crowd) for the first time.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b)[3] of the Act in general and furthers the objectives of Section 6(b)(5)[4] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6)[6] thereunder.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[7] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The CBOE has requested that the Commission waive the 30-day operative delay so that the proposed rule change becomes effective immediately.[8] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal would give the Exchange the flexibility to establish lower participation guarantees than the Commission has approved in the past and would apply only to newly-listed products or products that are being allocated to a DPM trading crowd for the first time. Therefore, the Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative immediately.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2005–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(6).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] The Exchange gave the Commission written notice of its intent to file the proposed rule change by notice on January 14, 2005.

[9] For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–15 and should be submitted on or before March 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–601 Filed 2–14–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51156; File No. SR–DTC–2004–12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Revise Fees for Low Volume Tender Offers

February 8, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 19, 2004, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of fee revisions for low volume tender offers processed through the facilities of DTC. The low volume tender offer fee is payable by the offeror in advance of DTC's processing the offer and under the proposed rule change will be payable in advance of DTC's processing each extension of an offer.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adjust the fees DTC charges for low volume tender offers so that the fees may be aligned with the estimated costs incurred by DTC with respect to low volume tender offers and extensions thereof.[4] DTC notes that certain offerors in low volume tender offers processed through DTC have extended the expiration of their offers multiple times. For tender offers other than low volume tender offers, extensions are unusual and multiple extensions almost never occur. With respect to low volume tender offers, however, DTC has seen offerors extend the offers as many as 15 times. Each extension involves significant processing costs for DTC.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[5] and the rules and regulations thereunder applicable to DTC because the fees will be more equitably allocated among the users of these DTC services and products.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR-DTC–2004–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–DTC–2004–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] For additional information concerning DTC's low volume tender offer fee, refer to Securities Exchange Act Release No. 41032 (February 9, 1999), 64 FR 7931 [File No. SR–DTC–99–01].

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] The fee for low volume tender offers will be increased from a flat fee of $2,900 per offer to a fee of $2,900 per offer and per each extension thereof.

[5] 15 U.S.C. 78q–1.

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.DTC.org.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2004–12 and should be submitted on or before March 8, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–620 Filed 2–14–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51154; File No. SR–NSCC–2003–21]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Withdrawal of a Proposed Rule Change Relating to the New Separately Managed Accounts Service

February 8, 2005.

On February 2, 2005, the National Securities Clearing Corporation (''NSCC'') withdrew proposed rule change SR–NSCC–2003–21 which had been filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The purpose of the proposed rule was to add a new Rule 59 to NSCC's Rules to establish an information messaging system called the Separately Managed Accounts (''SMA'') Service. Notice of the proposal was published in the **Federal Register** on December 3, 2004.[2]

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 48846 (November 26, 2003), 68 FR 67714.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–619 Filed 2–14–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51153; File No. SR–SCCP–2005–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Stock Clearing Corporation of Philadelphia Relating to the Extension of Its Fee Waiver for Electronic Communications Networks

February 8, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 20, 2005, Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend SCCP's existing fee waiver for ECN trades for an additional one-year period, through January 23, 2006, with the intention of attracting equity order flow from ECNs to the Exchange.

SCCP believes that its current program is a reasonable method to attract large order flow providers such as ECNs to the Exchange and SCCP. Additional order flow should enhance liquidity and improve the Exchange's, and therefore SCCP's, competitive position in equity trading and processing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP, pursuant to Section 19(b)(1) and Rule 19b–4 thereunder,[3] proposes to amend its schedule of fees to extend SCCP's current one-year pilot program for an additional one-year period, through January 23, 2006, in order to continue the existing SCCP fee waivers for SCCP participants for trades executed on the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') for Electronic Communications Networks (''ECNs'').[4] The current pilot program is scheduled to expire on January 23, 2005.[5]

SCCP has implemented a fee waiver, since early 2001,[6] such that SCCP waives certain fees and charges, including trade recording fees, value fees, treasury transaction charges, charges for non-specialist Nasdaq 100 Trust, Series 1 (''QQQ''),[7] Standard & Poor's Depository Receipts®

[3] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4.

[4] As stated on the SCCP fee schedule, ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a single price set by the ECN (by algorithm or by any derivative pricing mechanism) and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by, or on behalf of, an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal. See SEC Rule 11Ac1–1(a)(8).

[5] Securities Exchange Act Release No. 49189 (February 4, 2004), 69 FR 6713 (February 11, 2004) [File No. SR–SCCP–2004–01].

[6] Securities Exchange Act Release No. 45145 (December 10, 2001), 66 FR 65017 (December 17, 2001) [File No. SR–SCCP–2001–01].

[7] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq® The Nasdaq Stock Market®, Nasdaq 100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠, are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising or calculating the Index or in modifying in any way its method for determining, comprising or calculating the Index in the future.

(''SPDRs'')[8] and DIAMONDS® Exchange Traded Funds (''DIAMONDS®'')[9] (collectively ''ETF charges'') for ECN trades,[10] but not account fees, research fees, computer transmission/tape charges, or other charges on its fee schedule. At this time, SCCP proposes to continue this fee waiver through January 23, 2006.

This proposal affects ECN trades not related to such ECN acting as a Phlx specialist or floor broker on the Phlx. Currently, no ECN operates from the Exchange's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the Phlx equity trading floor, it could be subject to various SCCP fees respecting its non-ECN floor operation. In addition, an ECN's transactions as a floor broker would be subject to the applicable SCCP fee, as would any ECN's specialist trades.[11] Even if the ECN is acting as a floor broker or specialist with respect to some trades, those trades for which it is not acting as a floor broker or specialist, but rather an ECN, would be eligible for this fee waiver.

A copy of SCCP's schedule of fees which includes the fees proposed to be waived for ECNs to the filing of proposed rule change as Exhibit 5.[12]

SCCP believes that its proposal to extend its current pilot program for one year, thereby continuing to implement the existing SCCP fee waivers described above for ECNs, is consistent with Section 17A(b)(3)(D)[13] of the Act because it provides for the equitable allocation of reasonable dues, fees, and other charges in order to attract new order flow to Phlx and SCCP. SCCP believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to the Exchange. Specifically, ECNs operate a unique electronic agency business, similar to a securities exchange, as opposed to directly executing orders for their own customers as principal or agent.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[14] and Rule 19b–4(f)(2)[15] thereunder because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–SCCP–2005–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number *SR–SCCP–2005–01.* This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of SCCP. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–SCCP–2005–01* and should be submitted on or before March 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–605 Filed 2–14–05; 8:45 am]

BILLING CODE 8010–01–P

[8] Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,'' ''Standard & Poor's 500®'', and ''500'' are trademarks of The McGraw-Hill Companies, Inc., and have been licensed for use by the Philadelphia Stock Exchange, Inc., in connection with the listing and trading of SPDRs, on the Phlx. These products are not sponsored, sold or endorsed by S&P, a division of The McGraw-Hill Companies, Inc., and S&P makes no representation regarding the advisability of investing SPDRs.

[9] Dow Jones®,'' ''The Dow℠,'' ''Dow 30℠,'' ''Dow Jones Industrial Average℠'', ''Dow Jones Industrials℠,'' ''DJIA℠,'' ''DIAMONDS®'' and ''The Market's Measure®'' are trademarks of Dow Jones & Company, Inc. (''Dow Jones'') and have been licensed for use for certain purposes by the Philadelphia Stock Exchange, Inc., pursuant to a License Agreement with Dow Jones. The DIAMONDS Trust, based on the DJIA, is not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in the DIAMONDS Trust.

[10] Certain provisions of the SCCP Fee Schedule do not apply to ECNs because they apply to specialists and/or relate to margin financing, such as specialist discount, margin account interest, P&L statement charges, buy-ins, specialist ETF charges, and SCCP Transaction Charge (Remote Specialists Only).

[11] For example, an ECN acting as a specialist would be subject to the trade recording fee for specialist trades matching with PACE trades.

[12] No changes are being made to the SCCP fee schedule in connection with the ECN fee as described in this proposal. The Exchange, however, proposes to make a minor, technical change to delete a reference to a date when the fee schedule was last updated (''December 2004'') in order to minimize any member confusion.

[13] 15 U.S.C. 78q–1(b)(3)(D).

[14] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Social Security Ruling, SSR 05–1c.]

The Social Security Act, Sections 223(d)(2)(A) and 1614(a)(3)(B), as Amended (42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B)—Disability Insurance Benefits and Supplemental Security Income—Whether Past Relevant Work Must Exist in Significant Numbers in the National Economy

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling (SSR) 05–1c. This ruling is based on the decision of the Supreme Court of the United States in the case of *Jo Anne B. Barnhart, Commissioner of Social Security* v. *Pauline Thomas,* 540 U.S. 20, 124 S.Ct. 376 (2003). That decision affirmed as reasonable SSA's interpretation of sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act (42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B)) that an individual who remains physically and mentally able to do his or her past relevant work will be found not disabled, without the need for SSA to investigate whether that previous work exists in the national economy.

DATES: *Effective Date:* February 15, 2005.

FOR FURTHER INFORMATION CONTACT: Becky Morris, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–7829 or TTY (800) 966–5609.

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this Social Security Ruling, we are doing so in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance and 96.006 Supplemental Security Income.)

Dated: February 9, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

This Ruling concerns the Social Security Administration's (SSA) interpretation of sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act (42 U.S.C. 423(d)(2)(A) and 1382(a)(3)(B)) that a claimant who remains physically and mentally able to perform his or her past relevant work will be found not disabled (see 20 CFR 404.1520 and 416.920), regardless of whether that previous work exists in the national economy.

In June 1996, the claimant applied for Social Security disability insurance benefits and for Supplemental Security Income, alleging disability due to heart disease and cervical and lumbar radiculopathy. She had worked as an elevator operator for 6 years until her job was eliminated in August 1995. The SSA denied her claim at the initial and reconsideration levels of adjudication and she requested a hearing before an Administrative Law Judge (ALJ). The ALJ found that she was not under a disability because her impairments did not prevent her from performing her past work as an elevator operator. The ALJ rejected the claimant's argument that she was not able to do her past work because it no longer existed in significant numbers in the national economy. The SSA's Appeals Council denied the claimant's request for review. The United States District Court for the District of New Jersey affirmed the ALJ's findings, concluding that whether the old job exists is irrelevant under SSA's regulations. The Court of Appeals for the Third Circuit reversed and remanded, holding that the statute unambiguously provides that the ability to perform prior work disqualifies a claimant from benefits only if the work is ''substantial gainful work which exists in the national economy.''

The Supreme Court of the United States (the Court) held that 42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B) do not require a different interpretation and that, because SSA's regulations (20 CFR 404.1520, 404.1560(b), 416.920, and 416.960(b)) are a reasonable interpretation of the text of the Act, they must be deferred to and given effect.

Cite as: 540 U. S. 20 (2003)

Opinion of the Court

Supreme Court of the United States

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No. 02–763

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Jo Anne B. Barnhart, Commissioner of Social Security, Petitioner v. Pauline Thomas

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

[November 12, 2003]

Justice Scalia delivered the opinion of the Court.

Under the Social Security Act, the Social Security Administration (SSA) is authorized to pay disability insurance benefits and Supplemental Security Income to persons who have a ''disability.'' A person qualifies as disabled, and thereby eligible for such benefits, ''only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.'' 42 U.S.C. 423(d)(2)(A), 1382c(a)(3)(B). The issue we must decide is whether the SSA may determine that a claimant is not disabled because she remains physically and mentally able to do her previous work, without investigating whether that previous work exists in significant numbers in the national economy.

Pauline Thomas worked as an elevator operator for six years until her job was eliminated in August 1995. In June 1996, at age 53, Thomas applied for disability insurance benefits under Title II and Supplemental Security Income under Title XVI of the Social Security Act. See 49 Stat. 622, as amended, 42 U.S.C. 401 *et seq.* (Title II); as added, 86 Stat. 1465, and as amended, section 1381 *et seq.* (Title XVI). She claimed that she suffered from, and was disabled by, heart disease and cervical and lumbar radiculopathy.

After the SSA denied Thomas's application initially and on reconsideration, she requested a hearing before an Administrative Law Judge (ALJ). The ALJ found that Thomas had ''hypertension, cardiac arrhythmia, [and] cervical and lumbar strain/sprain.'' Decision of ALJ 5, Record 15. He concluded, however, that Thomas was not under a ''disability'' because her ''impairments do not prevent [her] from performing her past relevant work as an elevator operator.'' Id., at 6, Record 16. He rejected Thomas's

argument that she is unable to do her previous work because that work no longer exists in significant numbers in the national economy. The SSA's Appeals Council denied Thomas's request for review.

Thomas then challenged the ALJ's ruling in the United States District Court for the District of New Jersey, renewing her argument that she is unable to do her previous work due to its scarcity. The District Court affirmed the ALJ, concluding that whether Thomas's old job exists is irrelevant under the SSA's regulations. *Thomas* v. *Apfel,* Civ. No. 99–2234 (Aug. 17, 2000). The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded. Over the dissent of three of its members, it held that the statute unambiguously provides that the ability to perform prior work disqualifies from benefits only if it is ''substantial gainful work which exists in the national economy.'' 294 F. 3d 568, 572 (2002). That holding conflicts with the decisions of four other Courts of Appeals. See *Quang Van Han* v. *Bowen,* 882 F. 2d 1453, 1457 (CA9 1989); *Garcia* v. *Secretary of Health and Human Services,* 46 F. 3d 552, 558 (CA6 1995); *Pass* v. *Chater,* 65 F. 3d 1200, 1206–1207 (CA4 1995); *Rater* v. *Chater,* 73 F. 3d 796, 799 (CA8 1996). We granted the SSA's petition for certiorari. 537 U.S. 1187 (2003).

As relevant to the present case, Title II of the Act defines ''disability'' as the ''inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.'' 42 U.S.C. 423(d)(1)(A). That definition is qualified, however, as follows:

> ''An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that *he is not only unable to do his previous work but cannot,* considering his age, education, and work experience, *engage in any other kind of substantial gainful work which exists in the national economy* * * *'' section 423(d)(2)(A) (emphasis added).

''[W]ork which exists in the national economy'' is defined to mean ''work which exists in significant numbers either in the region where such individual lives or in several regions of the country.'' Ibid. Title XVI of the Act, which governs Supplemental Security Income benefits for disabled indigent persons, employs the same definition of ''disability'' used in Title II, including a qualification that is verbatim the same as section 423(d)(2)(A). See 42 U.S.C. 1382c(a)(3)(B). For simplicity's sake, we will refer only to the Title II provisions, but our analysis applies equally to Title XVI.

Section 423(d)(2)(A) establishes two requirements for disability. First, an individual's physical or mental impairment must render him ''unable to do his previous work.'' Second, the impairment must also preclude him from ''engag[ing] in any other kind of substantial gainful work.'' The parties agree that the latter requirement is qualified by the clause that immediately follows it—which exists in the national economy.'' The issue in this case is whether that clause also qualifies ''previous work.''

The SSA has answered this question in the negative. Acting pursuant to its statutory rulemaking authority, 42 U.S.C. 405(a) (Title II), 1383(d)(1) (Title XVI), the agency has promulgated regulations establishing a five-step sequential evaluation process to determine disability. See 20 CFR 404.1520 (2003) (governing claims for disability insurance benefits); § 416.920 (parallel regulation governing claims for Supplemental Security Income). If at any step a finding of disability or non-disability can be made, the SSA will not review the claim further. At the first step, the agency will find non-disability unless the claimant shows that he is not working at a ''substantial gainful activity.'' §§ 404.1520(b), 416.920(b). At step two, the SSA will find non-disability unless the claimant shows that he has a ''severe impairment,'' defined as ''any impairment or combination of impairments which significantly limits [the claimant's] physical or mental ability to do basic work activities.'' §§ 404.1520(c), 416.920(c). At step three, the agency determines whether the impairment which enabled the claimant to survive step two is on the list of impairments presumed severe enough to render one disabled; if so, the claimant qualifies. §§ 404.1520(d), 416.920(d). If the claimant's impairment is not on the list, the inquiry proceeds to step four, at which the SSA assesses whether the claimant can do his previous work; unless he shows that he cannot, he is determined not to be disabled.[1] If the claimant survives the fourth stage, the fifth, and final, step requires the SSA to consider so-called ''vocational factors'' (the claimant's age, education, and past work experience), and to determine whether the claimant is capable of performing other jobs existing in significant numbers in the national economy. §§ 404.1520(f), 404.1560(c), 416.920(f), 416.960(c).[2]

As the above description shows, step four can result in a determination of no disability without inquiry into whether the claimant's previous work exists in the national economy; the regulations explicitly reserve inquiry into the national economy for step five. Thus, the SSA has made it perfectly clear that it does not interpret the clause ''which exists in the national economy'' in § 423(d)(2)(A) as applying to ''previous work.''[3] The issue presented is whether this agency interpretation must be accorded deference.

As we held in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984), when a statute speaks clearly to the issue at hand we ''must give effect to the unambiguously expressed intent of Congress,'' but when the statute ''is silent or ambiguous'' we must defer to a reasonable construction by the agency charged with its implementation. The Third Circuit held that, by referring first to ''previous work'' and then to ''*any other* kind of substantial gainful work which exists in the national economy,'' 42 U.S.C. 423(d)(2)(A) (emphasis added), the statute unambiguously indicates that the former is a species of the latter. ''When,'' it said, ''a sentence sets out one or more specific items followed by 'any other' and a description, the specific items must fall within the description.'' 294 F. 3d, at 572. We disagree. For the reasons discussed below the interpretation adopted by SSA is at least a reasonable construction of the text and must therefore be given effect.

The Third Circuit's reading disregards—indeed, is precisely contrary to—the grammatical ''rule of the last antecedent,'' according to which a limiting clause or phrase (here, the relative clause ''which exists in the national economy'') should ordinarily

[1] The four-step instructions to the claimant read as follows: ''If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment(s), we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled.'' 20 CFR 404.1520(e), 416.920(e)(2003).

[2] In regulations that became effective on September 25, 2003, the SSA amended certain aspects of the five-step process in ways not material to this opinion. The provisions referred to as subsections (e) and (f) in this opinion are now subsections (f) and (g).

[3] This interpretation was embodied in the regulations that first established the five-step process in 1978, see 43 FR 55349 (codified, as amended, at 20 CFR 404.1520 and 416.920 (1982)). Even before enactment of § 423(d)(2)(A) in 1967, the SSA disallowed disability benefits when the inability to work was caused by ''technological changes in the industry in which [the claimant] has worked.'' 20 CFR 404.1502(b) (1961).

be read as modifying only the noun or phrase that it immediately follows (here, ''any other kind of substantial gainful work''). See 2A N. Singer, Sutherland on Statutory Construction § 47.33, p. 369 (6th rev. ed. 2000) (''Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent''). While this rule is not an absolute and can assuredly be overcome by other indicia of meaning, we have said that construing a statute in accord with the rule is ''quite sensible as a matter of grammar.'' *Nobelman* v. *American Savings Bank,* 508 U.S. 324, 330 (1993). In *FTC* v. *Mandel Brothers, Inc.,* 359 U.S. 385 (1959), this Court employed the rule to interpret a statute strikingly similar in structure to section 423(d)(2)(A)—a provision of the Fur Products Labeling Act, 15 U.S.C. 69, which defined '' 'invoice' as 'a written account, memorandum, list, or catalog * * * transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, *or any other person who is engaged in dealing commercially in fur products or furs.*' '' 359 U.S., at 386 (quoting 15 U.S.C. 69(f)) (emphasis added). Like the Third Circuit here, the Court of Appeals in *Mandel Brothers* had interpreted the phrase '' 'any other' '' as rendering the relative clause (''who is engaged in dealing commercially'') applicable to all the specifically listed categories. 359 U.S., at 389. This Court unanimously reversed, concluding that the ''limiting clause is to be applied only to the last antecedent.'' *Id.,* at 389, and n. 4 (citing 2 J. Sutherland, Statutory Construction § 4921 (3d ed. 1943)).

An example will illustrate the error of the Third Circuit's perception that the specifically enumerated ''previous work'' ''must'' be treated the same as the more general reference to ''any other kind of substantial gainful work.'' 294 F. 3d, at 572. Consider, for example, the case of parents who, before leaving their teenage son alone in the house for the weekend, warn him, ''You will be punished if you throw a party or engage in any other activity that damages the house.'' If the son nevertheless throws a party and is caught, he should hardly be able to avoid punishment by arguing that the house was not damaged. The parents proscribed (1) a party, and (2) any other activity that damages the house. As far as appears from what they said, their reasons for prohibiting the home-alone party may have had nothing to do with damage to the house—for instance, the risk that underage drinking or sexual activity would occur. And even if their only concern was to prevent damage, it does not follow from the fact that the same interest underlay both the specific and the general prohibition that proof of impairment of that interest is required for both. The parents, foreseeing that assessment of whether an activity had in fact ''damaged'' the house could be disputed by their son, might have wished to preclude all argument by specifying and categorically prohibiting the one activity—hosting a party—that was most likely to cause damage and most likely to occur.

The Third Circuit suggested that interpreting the statute as does the SSA would lead to ''absurd results.'' Ibid. See also *Kolman* v. *Sullivan,* 925 F. 2d 212, 213 (CA7 1991) (the fact that a claimant could perform a past job that no longer exists would not be ''a rational ground for denying benefits''. The court could conceive of ''no plausible reason why Congress might have wanted to deny benefits to an otherwise qualified person simply because that person, although unable to perform any job that actually exists in the national economy, could perform a previous job that no longer exists.'' 294 F. 3d, at 572–573. But on the very next page the Third Circuit conceived of just such a plausible reason, namely, that ''in the vast majority of cases, a claimant who is found to have the capacity to perform her past work also will have the capacity to perform other types of work.'' Id., at 574, n. 5. The conclusion which follows is that Congress could have determined that an analysis of a claimant's physical and mental capacity to do his previous work would ''in the vast majority of cases'' serve as an effective and efficient administrative proxy for the claimant's ability to do some work that does exist in the national economy. Such a proxy is useful because the step-five inquiry into whether the claimant's cumulative impairments preclude him from finding ''other'' work is very difficult, requiring consideration of ''each of th[e] [vocational] factors and * * * an individual assessment of each claimant's abilities and limitations,'' *Heckler* v. *Campbell*, 461 U.S. 458, 460–461, n. 1 (1983) (citing 20 CFR §§ 404.1545–1404.1565 (1982)). There is good reason to use a workable proxy that avoids the more expansive and individualized step-five analysis. As we have observed, ''[t]he Social Security hearing system is 'probably the largest adjudicative agency in the western world.' * * * The need for efficiency is self-evident.'' 461 U.S., at 461, n. 2 (citation omitted).

The Third Circuit rejected this proxy rationale because it would produce results that ''may not always be true, and * * * may not be true in this case.'' 294 F. 3d, at 576. That logic would invalidate a vast number of the procedures employed by the administrative state. To generalize is to be imprecise. Virtually every legal (or other) rule has imperfect applications in particular circumstances. Cf. *Bowen* v. *Yuckert*, 482 U.S. 137, 157 (1987) (O.CONNOR, J., concurring) (''To be sure the Secretary faces an administrative task of staggering proportions in applying the disability benefits provisions of the Social Security Act. Perfection in processing millions of such claims annually is impossible''). It is true that, under the SSA's interpretation, a worker with severely limited capacity who has managed to find easy work in a declining industry could be penalized for his troubles if the job later disappears. It is also true, however, that under the Third Circuit's interpretation, impaired workers in declining or marginal industries who cannot do ''other'' work could simply refuse to return to their jobs—even though the jobs remain open and available—and nonetheless draw disability benefits. The proper *Chevron* inquiry is not whether the agency construction can give rise to undesirable results in some instances (as here both constructions can), but rather whether, in light of the alternatives, the agency construction is reasonable. In the present case, the SSA's authoritative interpretation certainly satisfies that test.

We have considered respondent's other arguments and find them to be without merit.

* * * * *

We need not decide today whether Section 423(d)(2)(A) compels the interpretation given it by the SSA. It suffices to conclude, as we do, that § 423(d)(2)(A) does not unambiguously require a different interpretation, and that the SSA's regulation is an entirely reasonable interpretation of the text. The judgment of the Court of Appeals is reversed.

It is so ordered.

Justice Scalia delivered the opinion for a unanimous Court.

[FR Doc. 05–2860 Filed 2–14–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4991]

Culturally Significant Objects Imported for Exhibition Determinations: ''Death and the Afterlife in Ancient Egypt * * * Treasures From the British Museum''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Death and the Afterlife in Ancient Egypt * * * Treasures from the British Museum'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Bowers Museum, from on or about April 17, 2005, until on or about April 18, 2010, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: February 7, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–2898 Filed 2–14–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4897]

Advisory Committee on International Economic Policy; Notice of Committee Renewal

1. *Renewal of Advisory Committee.* The Department of State has renewed the Charter of the Advisory Committee on International Economic Policy. The Committee serves in a solely advisory capacity concerning major issues and problems in international economic policy. The Committee provides information and advice on the effective integration of economic interests into overall foreign policy and on the Department of State's role in advancing American commercial interests in a competitive global economy. The Committee also appraises the role and limits of international economic institutions and advises on the formulation of U.S. economic policy and positions.

This Committee includes representatives of American organizations and institutions having an interest in international economic policy, including representatives of American business, labor unions, public interest groups, and trade and professional associations. The Committee meets at least annually to advise the Department on the full range of international economic policies and issues.

For further information, please call David Freudenwald, Office of Economic Policy Analysis and Public Diplomacy, Economic Bureau, U.S. Department of State, at (202) 647–2231.

Daniel A. Clune,

Director, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 05–2904 Filed 2–14–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4963]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 17 and 18 at the Boeing Company in Arlington, Virginia. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b[c]1 and [4], the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda will include updated committee reports, a global threat overview, and other discussions involving sensitive and classified information, and corporate proprietary/security information, such as private sector physical and procedural security policies and protective programs and the protection of U.S. business information overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: January 21, 2005.

Joe D. Morton,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. 05–2899 Filed 2–14–05; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 28, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–20165.
Date: Filed: January 24, 2005.
Parties: Members of the International Air Transport Association.
Subject:

PTC3 0819 dated 24 January 2005.
Mail Vote 430—Resolution 010f—TC3 Japan, Korea-South East Asia Special Passenger Amending Resolution between Japan and China (excluding Hong Kong SAR and Macao SAR) r1–r9.
Intended effective date: 10 February 2005.

Docket Number: OST–2005–20167.
Date Filed: January 24, 2005.
Parties: Members of the International Air Transport Association.
Subject:

PTC3 0820 dated 24 January 2005.
Mail Vote 432—Resolution 010h—TC3 Japan, Korea—South East Asia Special Passenger Amending Resolution between Japan and China (excluding Hong Kong SAR and Macao SAR) r1–r9.
Intended effective date: 1 March 2005.

Docket Number: OST–2005–20252.
Date Filed: January 27, 2005.

Parties: Members of the International Air Transport Association.

Subject:

Mail Vote 428—Memorandum PTC3 0821, PTC23 EUR–J/K 0120, PTC23 ME–TC3 0226, PTC23 AFR–TC3 0261, PTC31 N&C/CIRC 0300, PTC123 0306 dated 28 January 2005.

Resolution 010d—Special Passenger Amending Resolution from Japan r1–r12.

Intended effective date: 15 January 2005.

Docket Number: OST–2005–20260.

Date Filed: January 28, 2005.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 EUR–SEA 0194 dated 17 December 2004.

Europe-South East Asia Resolutions r1–r14.

PTC23 EUR-SEA 0195 dated 14 January 2005.

Europe-South East Asia Resolutions Technical Correction Minutes: PTC23 EUR–SEA 0199 dated 27 January 2005.

Tables: PTC23 EUR–SEA Fares 0059 dated 21 December 2004 Europe-South East Asia Specified Fares Tables.

Intended effective date: 1 April 2005.

Renee V. Wright,

Acting Program Manager, Alternate Federal Register Liaison.

[FR Doc. 05–2862 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 28, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due dates for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1995–196.

Date Filed: January 28, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 18, 2005.

Description: Application of United Air Lines, Inc., requesting renewal of its experimental certificate of public convenience and necessity for Route 669 (U.S.-Ukraine).

Renee V. Wright,

Acting Program Manager, Alternate Federal Register Liaison.

[FR Doc. 05–2874 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2004–16944]

Operating Limitations at Chicago O'Hare International Airport

ACTION: Notice of order to show cause and request for information.

SUMMARY: The FAA has issued an order to show cause, which solicits the views of interested persons on the FAA's tentative determination to extend until October 31 an August 18, 2004, order limiting the number of scheduled aircraft arrivals at O'Hare International Airport during peak operating hours. The order to show cause also invites written views on whether the FAA should allocate any unused capacity while the extended order is in effect and, if so, how the FAA should allocate any such unused capacity. The text of the order to show cause is set forth in this notice.

DATES: Any written information that responds to the FAA's order to show cause must be submitted by February 24, 2005.

ADDRESSES: You may submit written information, identified by docket number FAA–2004–16944, by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting information on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001. If sent by mail, information is to be submitted in two copies. Persons wishing to receive confirmation of receipt of their written submission should include a self-addressed stamped postcard.
- *Hand Delivery:* Docket Management System, Room PL–401, on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number FAA–2004–16944 for this notice at the beginning of the information that you submit. Note that the information received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Submissions to the docket that include trade secrets, confidential, commercial, or financial information, or sensitive security information will not be posted in the public docket. Such information will be placed in a separate file to which the public does not have access, and a note will be placed in the public docket to state that the agency has received such materials from the submitter.

FOR FURTHER INFORMATION CONTACT: Gerry Shakley, System Operations, Air Traffic Organization: telephone (202) 267–9424; facsimile (202) 267–7277; e-mail *gerry.shakley@faa.gov*.

SUPPLEMENTARY INFORMATION:

Order To Show Cause

The Federal Aviation Administration (FAA) has tentatively determined that it will extend through October 31, 2005, the FAA's August 18, 2004, order limiting scheduled operations at O'Hare International Airport (O'Hare). This order to show cause invites air carriers and other interested persons to submit comments in Docket No. FAA–2004–16944 on this proposal to extend the duration of the August 18 order.

In the absence of the FAA's extension of the August 18 order, the FAA anticipates a return of the congestion-related delays that precipitated the voluntary schedule reductions and adjustments reflected in the August 18 order. In a separate docket, the FAA intends to soon solicit public comment on a proposed rule that would limit the number of scheduled operations at O'Hare. The FAA expects that the extension of the August 18 order would coincide with the effective date of any final rule adopted after the FAA's consideration of the public comments filed in that docket.

The FAA's authority to extend the August 18 order is the same as the authority cited in that order. In part, the FAA proposes to extend the August 18 order under the agency's broad authority in 49 U.S.C. 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to

develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use.

Background

On August 18, 2004, the FAA issued an order limiting the number of scheduled arrivals that air carriers conduct at O'Hare during peak hours. The August 18 order followed a period during which O'Hare operated without any regulatory constraint on the number of aircraft operations, and O'Hare experienced significant congestion-related delay. According to the Bureau of Transportation Statistics, in November 2003, O'Hare ranked last among the nation's thirty-one major airports for on-time arrival performance, with on-time arrivals 57.26% of the time. O'Hare also ranked last in on-time departures in November 2003, yielding on-time departures 66.94% of the time. The data for December 2003 reflected a similar performance by O'Hare—ranking last with 60.06% of arrivals on time and 67.23% of departures on time. Despite the high proportion of delayed flights, however, when the air carriers published their January and February 2004 schedules in the Official Airline Guide, the schedules revealed that the air carriers intended to add still more flight operations to O'Hare's schedule.

In January 2004, the two air carriers conducting most of the scheduled operations at O'Hare—together accounting for about 88% of O'Hare's scheduled flights—agreed to a temporary 5% reduction of their proposed peak-hour schedules at the airport. When the voluntarily reduced schedules failed to reduce sufficiently O'Hare's congestion-related flight delays, the two air carriers agreed to a further 2.5% reduction of their scheduled peak-hour operations at O'Hare. The FAA captured the voluntary schedule reductions in FAA orders, and the orders were effective through October 30, 2004.

By the summer of 2004, it was apparent that the schedule reductions agreed to in the first half of the year, which were made by only two of the many air carriers conducting scheduled operations at O'Hare, were unlikely to be renewed after the orders expired on October 30. In the absence of a voluntary constraint, the industry's proposed schedules for November, as reported in the preliminary Official Airline Guide in July, reflected that the number of scheduled arrivals during several hours would approach or exceed O'Hare's highest possible arrival capacity. During one hour, the number of scheduled arrivals would have exceeded by 32% O'Hare's capacity under ideal conditions.

Therefore, the FAA invited all scheduled air carriers to an August 2004 scheduling reduction meeting to discuss overscheduling at O'Hare, voluntary schedule reductions, and retiming flights to less congested periods. The August meeting and subsequent negotiations led the FAA to issue the August 18 order, which limited the number of scheduled arrivals conducted by U.S. and Canadian air carriers at O'Hare during peak operating hours. The order also defined opportunities for new entry and for growth by limited incumbent air carriers at O'Hare. The order took effect November 1, 2004, and in the absence of an extension, it will expire on April 30, 2005.

The flight limits implemented by the August 18 order have been effective. Preliminary data reflect that the voluntary schedule reductions and adjustments that the order implements have in the first three months yielded a 21% reduction in average arrival delay minutes at O'Hare when compared to the published August 2004 schedules. Comparing the operational data for O'Hare from November 2003 with that from November 2004, the voluntary schedule adjustments over that period have cumulatively resulted in an approximate 42% reduction in average arrival delay minutes.

Order To Show Cause

The FAA is planning to issue soon a notice of proposed rulemaking to address, for a specified duration, scheduled operations at O'Hare. The notice would solicit public comment on a proposed regulation in a separate public docket associated with that rulemaking. After considering the comments received on the proposed rule, the FAA expects to issue a final rule that will address congestion-related delay at O'Hare. The rulemaking process would enable the FAA to adopt more refined measures for managing air traffic at O'Hare, but the FAA could not complete such a process before the August 18 order's current expiration date.

To prevent a recurrence of overscheduling at O'Hare during the interim between the expiration of the August 18, 2004, order on April 30 and, if adopted, the effective date of a rule, the FAA tentatively intends to extend the August 18 order. The limits on arrivals and allocation of arrival rights embodied in the August 18 order reflect the FAA's agreements with U.S. and Canadian air carriers. As a result, maintaining the order for an additional six months constitutes a reasonable approach for preventing unacceptable congestion and delays at O'Hare. The August 18 order, as extended, would expire on October 31, 2005.

The August 18 order does not include a mechanism to allocate any capacity that is unused by the air carrier to which it was assigned in the August 18 order. The FAA is specifically soliciting views on whether the FAA should allocate unused capacity under an extended order and, if so, how the FAA should allocate any such unused capacity.

Accordingly, the FAA directs all interested persons to show cause why the FAA should not make final its tentative findings and tentative decision to extend the August 18 order through October 31, 2005, by filing their written views in Docket No. FAA–2004–16944 on or before February 24, 2005. The FAA does not intend this request for the views of interested persons to address the longer-term issues that will be considered in any forthcoming proposed rulemaking. Therefore, any submissions to the current docket should be limited to the issues specified in this order.

Issued in Washington, DC, on February 10, 2005.

Rebecca MacPherson,

Assistant Chief Counsel for Regulation.

[FR Doc. 05–2927 Filed 2–10–05; 3:46 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

United States Mint

Proposed Collection: Comment Request for Customer Satisfaction and Opinion Surveys and Focus Group Interviews

AGENCY: United States Mint (Mint).

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the United States Mint, a bureau of the Department of the Treasury, is soliciting comments on the United States Mint customer satisfaction and opinion surveys and focus group interviews.

DATES: Written comments should be received on or before April 18, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Kathy Chiarello, Brand Manager, Office of Sales and Marketing, United States Mint, 801 9th Street, NW., 5th Floor, Washington, DC 20220; (202) 354–7809 (this is not a toll free number); *KChiarello@usmint.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection package should be directed to Brenda Butler, Program Analyst, Office of Records Management, United States Mint, 799 9th Street, NW., 4th Floor, Washington, DC 20220; (202) 772–7413 (this is not a toll-free number); *BrButler@usmint.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: United States Mint customer satisfaction and opinion surveys and focus group interviews.

OMB Number: 1525–0012.

Abstract: The proposed customer satisfaction and opinion surveys and focus group interviews will allow the United States Mint to assess the needs and desires of customers for future products and more efficient, economical services.

Current Actions: The United States Mint conducts customer satisfaction and opinion surveys and focus group interviews to determine the level of satisfaction of United States Mint customers.

Type of Review: Extension of a currently approved collection.

Affected Public: The affected public includes: the serious and casual numismatic collectors, dealers and people in the numismatic business and the general public or one-time only customers.

Estimated Number of Respondents: The estimated number of respondents for the next three years is 16,164, with a total estimated number of burden hours of 8,328.

Estimated Total Annual Burden Hours: The estimated number of annual burden hours is 2,776.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 10, 2005.

Yvonne Pollard,

Chief, Records Management Division, United States Mint.

[FR Doc. 05–2859 Filed 2–14–05; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New]

Agency Information Collection: Emergency Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA), has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). The reason for the emergency clearance is to continue obtaining certification from State approving agency and employees of VA certifying that they do not own any interest in a proprietary profit school. Disruption of the collection of information will harm VBA's efforts to carry out its mission. OMB has been requested to act on this emergency clearance request by February 25, 2005.

DATES: Comments must be submitted on or before February 22, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to OMB Control No. 2900—New.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or FAX (202) 395–6974. Please refer to OMB Control No. 2900—New.

SUPPLEMENTARY INFORMATION:

Title: Conflicting Interests Certification for Proprietary Schools, VA form 22–1919.

OMB Control Number: 2900–New.

Type of Review: Existing collection in use without an OMB control number.

Abstract: VA pays education benefits to veterans and other eligible person pursuing approved programs of education. 38 U.S.C. 3683 prohibits employees of VA and State approving agency enrolled in a proprietary profit school from owning any interest in the school.

Veterans or eligible person who is an official authorized to sign certificates of enrollment or verification/certifications of attendance, an owner or an officer are prohibited from receiving educational assistance based on their enrollment in any proprietary school. The information contained on VA Form 22–1919 completed by proprietary school officials certifying that the institution and enrollees do not have any conflict of interest.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 213,137 hours.

Estimated Average Burden Per Respondent: 23 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 557,040.

Dated: February 9, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–2906 Filed 2–14–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New]

Agency Information Collection: Emergency Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA), has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). The reason for the emergency clearance is to continue the use of VA Lender Appraisal Application Certification that is essential to VA's mission. Disruption of the collection of information will harm VBA's efforts to carry out its mission. OMB has been requested to act on this emergency clearance request by February 25, 2005.

DATES: Comments must be submitted on or before February 22, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–New.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or FAX (202) 395–6974. Please refer to ''2900–New.''

SUPPLEMENTARY INFORMATION:

Title: Lender Appraisal Processing Program Certification, VA Form 26–0785.

OMB Control Number: 2900–New (LAPP).

Type of Review: Existing collection in use without an OMB control number.

Abstract: VA Form 26–0785 is completed by lenders to nominate employees for approval as a VA approved Staff Appraisal Reviewer (SAR). Once approved, SAR's will have the authority to review real estate appraisals and to issue notices of values on behalf of VA. VA uses the information colleted to perform oversight of work delegated to lender responsible for making guaranteed VA backed loans.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 83 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: February 9, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–2907 Filed 2–14–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0086]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's eligibility for loan guaranty benefits and to replace a certificate of eligibility, and the amount of entitlement available.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 18, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0086'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for a Certificate of Eligibility for VA Home Loan Benefits, VA Form 26–1880.

OMB Control Number: 2900–0086.

Type of Review: Extension of a currently approved collection.

Abstract: Claimant's complete VA Form 26–1880 to establish eligibility for loan guaranty benefits, request restoration of entitlement previously used, or a duplicate Certificate of Eligibility due to the original being lost or stolen. VA will use the information to establish the applicant's eligibility for Loan Guaranty benefits, restoration of entitlement, and to issue a duplicate Certificate of Eligibility.

Affected Public: Individuals or households.

Estimated Annual Burden: 110,625 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 442,500.

Dated: February 3, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–2909 Filed 2–14–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0004]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This

notice solicits comments for information needed to determine entitlement to dependency and indemnity compensation (DIC), death pension and accrued benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 18, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0004'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable), VA Form 21–534.

b. Application for Dependency and Indemnity Compensation by a Surviving Spouse or Child—In-service Death Only, VA Form 21–543a.

OMB Control Number: 2900–0004.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 21–534 is used to gather the necessary information to determine surviving spouse and/or children of veterans entitlement to dependency and indemnity compensation (DIC), death benefits, (including death compensation is applicable), and any accrued benefits not paid to the veteran prior to death.

b. Military Casualty Assistance Officers complete VA Form 21–534 to assist surviving spouse and/or children of veterans who died on active duty in processing claims for dependency and indemnity compensation benefits. Accrued benefits and death compensation are not payable in claims for DIC.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 21–534–76,136.

b. VA Form 21–534a–600.

Estimated Average Burden Per Respondent:

a. VA Form 21–534–75 minutes.

b. VA Form 21–534a–15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. VA Form 21–534–76,136.

b. VA Form 21–534a–600.

Dated: February 3, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–2915 Filed 2–14–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0119]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 18, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0119'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Treatment in Hospital, VA FL 29–551.

OMB Control Number: 2900–0119.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 29–551 is used collect a claimant's records from the hospital where he or she was treated. VA uses the data to make a decision on the insured claim for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,055 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

Dated: February 3, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–2916 Filed 2–14–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0492]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to deduct insurance premiums from policyholder's bank account.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 18, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0492'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA MATIC Authorization, VA Form 29–0532–1.

OMB Control Number: 2900–0492.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–0532–1 is completed by veteran policyholders to authorize deduction of Government Life Insurance premiums from their bank account.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

Dated: February 3, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–2917 Filed 2–14–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463, Federal Advisory Committee Act, that a meeting of the Health Services Research and Development Service Merit Review Board will be held March 15–17, 2005, at the Crowne Plaza River Walk Hotel, 111 Pecan Street East, San Antonio, TX 78205. On March 15, 2005, the Nursing Research Initiative (NRI), Chronic Diseases, and Equity review subcommittees will meet from 8 a.m. to 5 p.m.; the general orientation session for all reviewers will be conducted from 7 p.m. to 9 p.m. On March 16 and 17, 2005, the Implementation and Management, Quality Measurement and Effectiveness, Research Methodology, and Special Populations subcommittees will convene from 8 a.m. to 5 p.m. both days.

The purpose of the Board is to review research and development applications concerned with the measurement and evaluation of health care services and with testing new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

On March 15, the meeting will be open to the public for approximately one half-hour from 7 p.m. until 7:30 p.m. to cover administrative matters and to discuss the general status of the program. The remaining portion of the meeting on March 15–17 will be closed. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols and similar documents.

During this portion of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plant to attend the open session should contact the Assistant Director, Scientific Review (124S), Health Services Research and Development Service, Department of Veterans Affairs, 1722 Eye Street, NW., Washington, DC, at least five days before the meeting. For further information, call (202) 254–0207.

Dated: January 25, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–2908 Filed 2–14–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held from Monday, March 7, 2005, through Tuesday, March 8, 2005. The Committee will meet at 8:30 a.m. to 4:30 p.m. each day in the Lafayette Room at the Hamilton Crowne Plaza, 14th and K Streets, NW., Washington, DC 20005. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the effectiveness of the policies,

organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide ongoing advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On March 7, 2005, the Committee will receive reports from program experts, assess the availability of health care and benefit services, review the Capital Asset Realignment for Enhanced Services (CARES) program and other initiatives designed to assist veterans who are homeless. On March 8, 2005, the Committee will review legislative recommendations and work on its annual report.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Designated Federal Officer, at (202) 273–5764. No time will be allocated for receiving oral presentations during the public meeting. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: February 7, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–2911 Filed 2–14–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans

Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Minority Veterans will be held from February 28 to March 4, 2005 in Puerto Rico and the U.S. Virgin Islands at various sites. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority veterans, to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The Committee will be conducting concurrent tours of Puerto Rico and the U.S. Virgin Islands February 28 to March 2, 2005. Town hall meetings will be held at the following times and locations:

February 28, 2005 from 7–9 p.m.

Puerto Rico: Utuado—Town Government Hall

U.S. Virgin Islands: Christiansted, St. Croix—American Legion Hall

March 1, 2005 from 7–9 p.m.

Puerto Rico: Juana Diaz, State Veterans Home

U.S. Virgin Islands: Charlotte Amalie, St. Thomas—American Legion Hall

The Committee will conduct panel hearings at the San Juan Marriott Resort Hotel, 1309 Ashford Avenue, San Juan, Puerto Rico on Wednesday, March 2, 2005 and Thursday, March 3, 2005. The hearings will begin at 1 p.m. on Wednesday and 11 a.m. on Thursday. Presenters will include the Director, Puerto Rican Public Advocate for Veterans Affairs; the Director, VA Medical Center; Director, VA Regional Office and the Director, Puerto Rico National Cemetery.

The Committee will accept written comments from interested parties on issues outlined in the meeting agenda, as well as other issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (OOM), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

For additional information about the meeting, please contact Ms. Elizabeth Olmo at (202) 273–6708.

Dated: February 7, 2005.

By Direction of the Secretary.

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 05–2910 Filed 2–14–05; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
February 15, 2005

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Special Conditions: Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F Airplanes; Flammability Reduction Means (Fuel Tank Inerting); Final Special Conditions; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM270; Special Conditions No. 25–285–SC]

Special Conditions: Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F Airplanes; Flammability Reduction Means (Fuel Tank Inerting)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes. These airplanes, as modified by Boeing Commercial Airplanes, include a new flammability reduction means that uses a nitrogen generation system to reduce the oxygen content in the center wing fuel tank so that exposure to a combustible mixture of fuel and air is substantially minimized. This system is intended to reduce the average flammability exposure of the fleet of airplanes with the system installed to a level equivalent to 3 percent of the airplane operating time. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the design and installation of this system. These special conditions contain the additional safety standards the Administrator considers necessary to ensure an acceptable level of safety for the installation of the system and to define performance objectives the system must achieve to be considered an acceptable means for minimizing development of flammable vapors in the fuel tank installation.

DATES: The effective date of these special conditions is March 17, 2005.

FOR FURTHER INFORMATION CONTACT: Mike Dostert, Propulsion and Mechanical Systems Branch, FAA, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2132, facsimile (425) 227–1320, e-mail *mike.dostert@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Boeing Commercial Airplanes intends to modify Model 747 series airplanes to incorporate a new flammability reduction means (FRM) that will inert the center fuel tanks with nitrogen-enriched air (NEA). Though the provisions of § 25.981, as amended by amendment 25–102, will apply to this design change, these special conditions address novel design features.

Regulations used as the standard for certification of transport category airplanes prior to amendment 25–102, effective June 6, 2001, were intended to prevent fuel tank explosions by eliminating possible ignition sources from inside the fuel tanks. Service experience of airplanes certificated to the earlier standards shows that ignition source prevention alone has not been totally effective at preventing accidents. Commercial transport airplane fuel tank safety requirements have remained relatively unchanged throughout the evolution of piston-powered airplanes and later into the jet age. The fundamental premise for precluding fuel tank explosions has involved establishing that the design does not result in a condition that would cause an ignition source within the fuel tank ullage (the space in the tank occupied by fuel vapor and air). A basic assumption in this approach has been that the fuel tank could contain flammable vapors under a wide range of airplane operating conditions, even though there were periods of time in which the vapor space would not support combustion.

Fuel Properties

Jet fuel vapors are flammable in certain temperature and pressure ranges. The flammability temperature range of jet engine fuel vapors varies with the type and properties of the fuel, the ambient pressure in the tank, and the amount of dissolved oxygen released from the fuel into the tank. The amount of dissolved oxygen in a tank will also vary depending on the amount of vibration and sloshing of the fuel that occurs within the tank.

Jet A fuel is the most commonly used commercial jet fuel in the United States. Jet A–1 fuel is commonly used in other parts of the world. At sea level and with no sloshing or vibration present, these fuels have flammability characteristics such that insufficient hydrocarbon molecules will be present in the fuel vapor-air mixture, to ignite when the temperature in the fuel tank is below approximately 100 °F. Too many hydrocarbon molecules will be present in the vapor to allow it to ignite when the fuel temperature is above approximately 175 °F. The temperature range where a flammable fuel vapor will form can vary with different batches of fuel, even for a specific fuel type. In between these temperatures the fuel vapor is flammable. This flammability temperature range decreases as the airplane gains altitude because of the corresponding decrease of internal tank air pressure. For example, at an altitude of 30,000 feet, the flammability temperature range is about 60 °F to 120 °F.

Most transport category airplanes used in air carrier service are approved for operation at altitudes from sea level to 45,000 feet. Those airplanes operated in the United States and in most overseas locations use Jet A or Jet A–1 fuel, which typically limits exposure to operation in the flammability range to warmer days.

We have always assumed that airplanes would sometimes be operated with flammable fuel vapors in their fuel tank ullage (the space in the tank occupied by fuel vapor and air).

Fire Triangle

Three conditions must be present in a fuel tank to support combustion. These include the presence of a suitable amount of fuel vapor, the presence of sufficient oxygen, and the presence of an ignition source. This has been named the ''fire triangle.'' Each point of the triangle represents one of these conditions. Because of technological limitations in the past, the FAA philosophy regarding the prevention of fuel tank explosions to ensure airplane safety was to only preclude ignition sources within fuel tanks. This philosophy included application of fail-safe design requirements to fuel tank components (lightning design requirements, fuel tank wiring, fuel tank temperature limits, etc.) that are intended to preclude ignition sources from being present in fuel tanks even when component failures occur.

Need To Address Flammability

Three accidents have occurred in the last 13 years as the result of unknown ignition sources within the fuel tank in spite of past efforts, highlighting the difficulty in continuously preventing ignition from occurring within fuel tanks. Between 1996 and 2000 the National Transportation Safety Board (NTSB) issued recommendations to improve fuel tank safety that included prevention of ignition sources and addressing fuel tank flammability (*i.e.,* the other two points of the fire triangle).

The FAA initiated safety reviews of all larger transport airplane type certificates to review the fail-safe features of previously approved designs and also initiated research into the feasibility of amending the regulations to address fuel tank flammability. Results from the safety reviews indicated a significant number of single

and combinations of failures that can result in ignition sources within the fuel tanks. The FAA has adopted rulemaking to require design and/or maintenance actions to address these issues; however, past experience indicates unforeseen design and maintenance errors can result in development of ignition sources. These findings show minimizing or preventing the formation of flammable vapors by addressing the flammability points of the fire triangle will enhance fuel tank safety.

On April 3, 1997, the FAA published a notice in the **Federal Register** (62 FR 16014), Fuel Tank Ignition Prevention Measures, that requested comments concerning the 1996 NTSB recommendations regarding reduced flammability. That notice provided significant discussion of the service history, background, and issues related to reducing flammability in transport airplane fuel tanks. Comments submitted to that notice indicated additional information was needed before the FAA could initiate rulemaking action to address all of the recommendations.

Past safety initiatives by the FAA and industry to reduce the likelihood of fuel tank explosions resulting from post crash ground fires have evaluated means to address other factors of the fire triangle. Previous attempts were made to develop commercially viable systems or features that would reduce or eliminate other aspects of the fire triangle (fuel or oxygen) such as fuel tank inerting or ullage space vapor ''scrubbing'' (ventilating the tank ullage with air to remove fuel vapor to prevent the accumulation of flammable concentrations of fuel vapor). Those initial attempts proved to be impractical for commercial transport airplanes due to the weight, complexity, and poor reliability of the systems, or undesirable secondary effects such as unacceptable atmospheric pollution.

Fuel Tank Harmonization Working Group

On January 23, 1998, the FAA published a notice in the **Federal Register** that established an Aviation Rulemaking Advisory Committee (ARAC) working group, the Fuel Tank Harmonization Working Group (FTHWG). The FAA tasked the FTHWG with providing a report to the FAA recommending regulatory text to address limiting fuel tank flammability in both new type certificates and the fleet of in service airplanes. The ARAC consists of interested parties, including the public, and provides a public process to advise the FAA concerning development of new regulations. [**Note:** The FAA formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity.]

The FTHWG evaluated numerous possible means of reducing or eliminating hazards associated with explosive vapors in fuel tanks. On July 23, 1998, the ARAC submitted its report to the FAA. The full report is in the docket created for this ARAC working group (Docket No. FAA–1998–4183). This docket can be reviewed on the U.S. Department of Transportation electronic Document Management System on the Internet at *http://dms.dot.gov.*

The report provided a recommendation for the FAA to initiate rulemaking action to amend § 25.981, applicable to new type design airplanes, to include a requirement to limit the time transport airplane fuel tanks could operate with flammable vapors in the vapor space of the tank. The recommended regulatory text proposed, ''Limiting the development of flammable conditions in the fuel tanks, based on the intended fuel types, to less than 7 percent of the expected fleet operational time (defined in this rule as flammability exposure evaluation time (FEET)), or providing means to mitigate the effects of an ignition of fuel vapors within the fuel tanks such that any damage caused by an ignition will not prevent continued safe flight and landing.'' The report included a discussion of various options for showing compliance with this proposal, including managing heat input to the fuel tanks, installation of inerting systems or polyurethane fire suppressing foam, and suppressing an explosion if one occurred.

The level of flammability defined in the proposal was established based on a comparison of the safety record of center wing fuel tanks that, in certain airplanes, are heated by equipment located under the tank, and unheated fuel tanks located in the wing. The ARAC concluded that the safety record of fuel tanks located in the wings with a flammability exposure of 2 to 4 percent of the FEET was adequate and that if the same level could be achieved in center wing fuel tanks, the overall safety objective would be achieved. The thermal analyses documented in the report revealed that center wing fuel tanks that are heated by air conditioning equipment located beneath them contain flammable vapors, on a fleet average basis, in the range of 15 to 30 percent of the fleet operating time.

During the ARAC review, it was also determined that certain airplane types do not locate heat sources adjacent to the fuel tanks and have significant surface areas that allow cooling of the fuel tank by outside air. These airplanes provide significantly reduced flammability exposure, near the 2 to 4 percent value of the wing tanks. The group therefore determined that it would be feasible to design new airplanes such that airplane operation with fuel tanks that were flammable in the flammable range would be limited to nearly that of the wing fuel tanks. Findings from the ARAC report indicated that the primary method of compliance available at that time with the requirement proposed by the ARAC would likely be to control heat transfer into and out of fuel tanks. Design features such as locating the air conditioning equipment away from the fuel tanks, providing ventilation of the air conditioning bay to limit heating and to cool fuel tanks, and/or insulating the tanks from heat sources, would be practical means of complying with the regulation proposed by the ARAC.

In addition to its recommendation to revise § 25.981, the ARAC also recommended that the FAA continue to evaluate means for minimizing the development of flammable vapors within the fuel tanks to determine whether other alternatives, such as ground-based inerting of fuel tanks, could be shown to be cost effective.

To address the ARAC recommendations, the FAA continued with research and development activity to determine the feasibility of requiring inerting for both new and existing designs.

FAA Rulemaking Activity

Based in part on the ARAC recommendations to limit fuel tank flammability exposure on new type designs, the FAA developed and published amendment 25–102 in the **Federal Register** on May 7, 2001 (66 FR 23085). The amendment included changes to § 25.981 that require minimization of fuel tank flammability to address both reduction in the time fuel tanks contain flammable vapors, (§ 25.981(c)), and additional changes regarding prevention of ignition sources in fuel tanks. Section 25.981(c) was based on the FTHWG recommendation to achieve a safety level equivalent to that achieved by the fleet of transports with unheated aluminum wing tanks, between 2 to 4 percent flammability. The FAA stated in the preamble to Amendment 25–102 that the intent of the rule was to—

* * * require that practical means, such as transferring heat from the fuel tank (e.g., use of ventilation or cooling air), be incorporated into the airplane design if heat sources were

placed in or near the fuel tanks that significantly increased the formation of flammable fuel vapors in the tank, or if the tank is located in an area of the airplane where little or no cooling occurs. The intent of the rule is to require that fuel tanks are not heated, and cool at a rate equivalent to that of a wing tank in the transport airplane being evaluated. This may require incorporating design features to reduce flammability, for example cooling and ventilation means or inerting for fuel tanks located in the center wing box, horizontal stabilizer, or auxiliary fuel tanks located in the cargo compartment.

Advisory circulars associated with Amendment 25–102 include AC 25.981–1B, ''Fuel Tank Ignition Source Prevention Guidelines,'' and AC 25.981–2, ''Fuel Tank Flammability Minimization.'' Like all advisory material, these advisory circulars describe an acceptable means, but not the only means, for demonstrating compliance with the regulations.

FAA Research

In addition to the notice published in the **Federal Register** on April 3, 1997, the FAA initiated research to provide a better understanding of the ignition process of commercial aviation fuel vapors and to explore new concepts for reducing or eliminating the presence of flammable fuel air mixtures within fuel tanks.

Fuel Tank Inerting

In the public comments received in response to the 1997 notice, reference was made to hollow fiber membrane technology that had been developed and was in use in other applications, such as the medical community, to separate oxygen from nitrogen in air. Air is made up of about 78 percent nitrogen and 21 percent oxygen, and the hollow fiber membrane material uses the absorption difference between the nitrogen and oxygen molecules to separate the NEA from the oxygen. In airplane applications NEA is produced when pressurized air from an airplane source such as the engines is forced through the hollow fibers. The NEA is then directed, at appropriate nitrogen concentrations, into the ullage space of fuel tanks and displaces the normal fuel vapor/air mixture in the tank.

Use of the hollow fiber technology allowed nitrogen to be separated from air, which eliminated the need to carry and store the nitrogen in the airplane. Researchers were aware of the earlier system's shortcomings in the areas of weight, reliability, cost, and performance. Recent advances in the technology have resolved those concerns and eliminated the need for storing nitrogen on board the airplane.

Criteria for Inerting

Earlier fuel tank inerting designs produced for military applications were based on defining ''inert'' as a maximum oxygen concentration of 9 percent. This value was established by the military for protection of fuel tanks from battle damage. One major finding from the FAA's research and development efforts was the determination that the 9 percent maximum oxygen concentration level benchmark, established to protect military airplanes from high-energy ignition sources encountered in battle, was significantly lower than that needed to inert civilian transport airplane fuel tanks from ignition sources resulting from airplane system failures and malfunctions that have much lower energy. This FAA research established a maximum value of 12 percent as being adequate at sea level. The test results are currently available on FAA Web site: *http://www.fire.tc.faa.gov/pdf/tn02-79.pdf* as FAA Technical Note ''Limiting Oxygen Concentrations Required to Inert Jet Fuel Vapors Existing at Reduced Fuel Tank Pressures,'' report number DOT/FAA/AR–TN02/79. As a result of this research, the quantity of NEA that is needed to inert commercial airplane fuel tanks was lessened so that an effective FRM can now be smaller and less complex than was originally assumed. The 12 percent value is based on the limited energy sources associated with an electrical arc that could be generated by airplane system failures on typical transport airplanes and does not include events such as explosives or hostile fire.

As previously discussed, existing fuel tank system requirements (contained in earlier Civil Air Regulation (CAR) 4b and now in 14 Code of Federal Regulations (CFR) part 25) have focused solely on prevention of ignition sources. The FRM is intended to add an additional layer of safety by reducing the exposure to flammable vapors in the heated center wing tank, not necessarily eliminating them under all operating conditions. Consequently, ignition prevention measures will still be the principal layer of defense in fuel system safety, now augmented by substantially reducing the time that flammable vapors are present in higher flammability tanks. We expect that by combining these two approaches, particularly for tanks with high flammability exposure, such as the heated center wing tank or tanks with limited cooling, risks for future fuel tank explosions can be substantially reduced.

Boeing Application for Certification of a Fuel Tank Inerting System

On November 15, 2002, Boeing Commercial Airplanes applied for a change to Type Certificate A20WE to modify Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes to incorporate a new FRM that inerts the center fuel tanks with NEA. These airplanes, approved under Type Certificate No. A20WE, are four-engine transport airplanes with a passenger capacity up to 624, depending on the submodel. These airplanes have an approximate maximum gross weight of 910,000 lbs with an operating range up to 7,700 miles.

Type Certification Basis

Under the provisions of § 21.101, Boeing Commercial Airplanes must show that the Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate A20WE include 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–70, except for special conditions and exceptions noted in Type Certificate Data Sheet A20WE.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the FRM installation on the Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes must also be shown to comply with § 25.981 at amendment 25–102.

If the Administrator finds that the applicable airworthiness regulations (14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 747–100/200B/

200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the acoustical change requirements of § 21.93(b).

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Boeing has applied for approval of an FRM to minimize the development of flammable vapors in the center fuel tanks of Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes. Boeing also plans to seek approval of this system on Boeing Model 737, 757, 767, and 777 airplanes.

Boeing has proposed to voluntarily comply with § 25.981(c), amendment 25–102, which is normally only applicable to new type designs or type design changes affecting fuel tank flammability. The provisions of § 21.101 require Boeing to also comply with §§ 25.981(a) and (b), amendment 25–102, for the changed aspects of the airplane by showing that the FRM does not introduce any additional potential sources of ignition into the fuel tanks.

The FRM uses a nitrogen generation system (NGS) that comprises a bleed-air shutoff valve, ozone converter, heat exchanger, air conditioning pack air cooling flow shutoff valve, filter, air separation module, temperature regulating valve controller and sensor, high-flow descent control valve, float valve, and system ducting. The system is located in the air conditioning pack bay below the center wing fuel tank. Engine bleed air from the existing engine pneumatic bleed source flows through a control valve into an ozone converter and then through a heat exchanger, where it is cooled using outside cooling air. The cooled air flows through a filter into an air separation module (ASM) that generates NEA, which is supplied to the center fuel tank, and also discharges oxygen-enriched air (OEA). The OEA from the ASM is mixed with cooling air from the heat exchanger to dilute the oxygen concentration and then exhausted overboard. The FRM also includes modifications to the fuel vent system to minimize dilution of the nitrogen-enriched ullage in the center tank due to cross-venting characteristics of the existing center wing fuel tank vent design.

Boeing originally proposed that the system be operated only during flight and that the center tank would continue to be inert on landing and remain inert during normal ground procedures. Boeing has more recently stated that the FRM design may include the capability to be operated on the ground.

Boeing has proposed that limited dispatch relief for operation with an inoperative NGS be allowed. Boeing has initially proposed a 10-day master minimum equipment list (MMEL) relief for the system. Boeing originally proposed that there be no cockpit or maintenance indication onboard for the NGS, and that periodic maintenance, using ground service equipment, be performed to verify system operation. More recently Boeing has stated that to meet operator needs and system reliability and availability objectives, built-in test functions would be included and system status indication of some kind would be provided. In addition, indications would be provided in the cockpit on certain airplane models that have engine indicating and crew alerting systems. The reliability of the system is expected to be designed to achieve a mean time between failure (MTBF) of 5000 hours or better.

Discussion

The FAA policy for establishing the type design approval basis of the FRM design will result in application of §§ 25.981(a) and (b), amendment 25–102, for the changes to the airplane that might increase the risk of ignition of fuel vapors. Boeing will therefore be required to substantiate that changes introduced by the FRM will meet the ignition prevention requirements of §§ 25.981(a) and (b), amendment 25–102 and other applicable regulations.

With respect to compliance with § 25.981(c), AC 25.981–2 provides guidance in addressing minimization of fuel tank flammability within a heated fuel tank, but there are no specific regulations that address the design and installation of an FRM that inerts the fuel tank. Since amendment 25–102 was adopted, significant advancements in inerting technology have reduced the size and complexity of inerting systems. Developments in inerting technology have made it practical to significantly reduce fuel tank flammability below the levels required within the rule. However, due to factors such as the limited availability of bleed air and electrical power, it is not considered practical at this time to develop systems for retrofit into existing airplane designs that can maintain a non-flammable tank ullage in all fuel tanks or during all operating conditions. These special conditions include additional requirements above that of amendment 25–102 to § 25.981(c) to minimize fuel tank flammability, such that the level of minimization in these special conditions would prevent a fuel tank with an FRM from being flammable during specific warm day operating conditions, such as those present when recent accidents occurred.

Definition of ''Inert''

For the purpose of these special conditions, the tank is considered inert when the bulk average oxygen concentration within each compartment of the tank is 12 percent or less at sea level up to 10,000 feet, then linearly increasing from 12 percent at 10,000 feet to 14.5 percent at 40,000 feet and extrapolated linearly above that altitude. The reference to each section of the tank is necessary because fuel tanks that are compartmentalized may encounter localized oxygen concentrations in one or more compartments that exceed the 12 percent value. Currently there is not adequate data available to establish whether exceeding the 12 percent limit in one compartment of a fuel tank could create a hazard. For example, ignition of vapors in one compartment could result in a flame front within the compartment that travels to adjacent compartments and results in an ignition source that exceeds the ignition energy (the minimum amount of energy required to ignite fuel vapors) values used to establish the 12 percent limit. Therefore, ignition in other compartments of the tank may be possible. Technical discussions with the applicant indicate the pressure rise in a fuel tank that was at or near the 12 percent oxygen concentration level would likely be well below the value that would rupture a typical transport airplane fuel tank. While this may be possible to show, it is not within the scope of these special conditions. Therefore, the effect of the definition of ''inert'' within these special conditions is that the bulk average of each individual compartment or bay of the tank must be evaluated and shown to meet the oxygen concentration limits specified in the definitions section of these special conditions (12 percent or less at sea level) to be considered inert.

Determining Flammability

The methodology for determining fuel tank flammability defined for use in these special conditions is based on that used by ARAC to compare the flammability of unheated aluminum wing fuel tanks to that of tanks that are heated by adjacent equipment. The ARAC evaluated the relative flammability of airplane fuel tanks using a statistical analysis commonly referred to as a ''Monte Carlo'' analysis that considered a number of factors affecting formation of flammable vapors in the fuel tanks. The Monte Carlo analysis calculates values for the parameter of interest by randomly selecting values for each of the uncertain variables from distribution tables. This calculation is conducted over and over to simulate a process where the variables are randomly selected from defined distributions for each of the variables. The results of changing these variables for a large number of flights can then be used to approximate the results of the real world exposure of a large fleet of airplanes.

Factors that are considered in the Monte Carlo analysis required by these special conditions include those affecting all airplane models in the transport airplane fleet such as: A statistical distribution of ground, overnight, and cruise air temperatures likely to be experienced worldwide, a statistical distribution of likely fuel types, and properties of those fuels, and a definition of the conditions when the tank in question will be considered flammable. The analysis also includes factors affecting specific airplane models such as climb and descent profiles, fuel management, heat transfer characteristics of the fuel tanks, statistical distribution of flight lengths (mission durations) expected for the airplane model worldwide, etc. To quantify the fleet exposure, the Monte Carlo analysis approach is applied to a statistically significant number (1,000,000) of flights where each of the factors described above is randomly selected. The flights are then selected to be representative of the fleet using the defined distributions of the factors described previously. For example, flight one may be a short mission on a cold day with an average flash point fuel, and flight two may be a long mission on an average day with a low flash point fuel, and on and on until 1,000,000 flights have been defined in this manner. For every one of the 1,000,000 flights, the time that the fuel temperature is above the flash point of the fuel, and the tank is not inert, is calculated and used to establish if the fuel tank is flammable. Averaging the results for all 1,000,000 flights provides an average percentage of the flight time that any particular flight is considered to be flammable. While these special conditions do not require that the analysis be conducted for 1,000,000 flights, the accuracy of the Monte Carlo analysis improves as the number of flights increases. Therefore, to account for this improved accuracy appendix 2 of these special conditions defines lower flammability limits if the applicant chooses to use fewer than 1,000,000 flights.

The determination of whether the fuel tank is flammable is based on the temperature of the fuel in the tank determined from the tank thermal model, the atmospheric pressure in the fuel tank, and properties of the fuel quantity loaded for a given flight, which is randomly selected from a database consisting of worldwide data. The criteria in the model are based on the assumption that as these variables change, the concentration of vapors in the tank instantaneously stabilizes and that the fuel tank is at a uniform temperature. This model does not include consideration of the time lag for the vapor concentration to reach equilibrium, the condensation of fuel vapors from differences in temperature that occur in the fuel tanks, or the effect of mass loading (times when the fuel tank is at the unusable fuel level and there is insufficient fuel at a given temperature to form flammable vapors). However, fresh air drawn into an otherwise inert tank during descent does not immediately saturate with fuel vapors so localized concentrations above the inert level during descent do not represent a hazardous condition. These special conditions allow the time during descent, where a localized amount of fresh air may enter a fuel tank, to be excluded from the determination of fuel tank flammability exposure.

Definition of Transport Effects

The effects of low fuel conditions (mass loading) and the effects of fuel vaporization and condensation with time and temperature changes, referred to as ''transport effects'' in these special conditions, are excluded from consideration in the Monte Carlo model used for demonstrating compliance with these special conditions. These effects have been excluded because they were not considered in the original ARAC analysis, which was based on a relative measure of flammability. For example, the 3 percent flammability value established by the ARAC as the benchmark for fuel tank safety for wing fuel tanks did not include the effects of cooling of the wing tank surfaces and the associated condensation of vapors from the tank ullage. If this effect had been included in the wing tank flammability calculation, it would have resulted in a significantly lower wing tank flammability benchmark value. The ARAC analysis also did not consider the effects of mass loading which would significantly lower the calculated flammability value for fuel tanks that are routinely emptied (*e.g.*, center wing tanks). The FAA and JAA have determined that using the ARAC methodology provides a suitable basis for determining the adequacy of an FRM system.

The effect of condensation and vaporization in reducing the flammability exposure of wing tanks is comparable to the effect of the low fuel condition in reducing the flammability exposure of center tanks. We therefore consider these effects to be offsetting, so that by eliminating their consideration, the analysis will produce results for both types of tanks that are comparable. Using this approach, it is possible to follow the ARAC recommendation of using the unheated aluminum wing tank as the standard for evaluating the flammability exposure of all other tanks. For this reason, both factors have been excluded when establishing the flammability exposure limits. During development of these harmonized special conditions, the FAA and the European Joint Aviation Authorities (JAA) agreed that using the ARAC methodology provides a suitable basis for determining the flammability of a fuel tank and consideration of transport effects should not be permitted.

Flammability Limit

The FAA, in conjunction with the Joint Airworthiness Authorities (JAA) and Transport Canada, has developed criteria within these special conditions that require overall fuel tank flammability to be limited to 3 percent of the fleet average operating time. This overall average flammability limit consists of times when the system performance cannot maintain an inert tank ullage, primarily during descent when the change in ambient pressures draws air into the fuel tanks and those times when the FRM is inoperative due to failures of the system and the airplane is dispatched with the system inoperative.

Specific Risk Flammability Limit

These special conditions also include a requirement to limit fuel tank flammability to 3 percent during ground operations, takeoff, and climb phases of

flight to address the specific risk associated with operation during warmer day conditions when accidents have occurred. The specific risk requirement is intended to establish minimum system performance levels and therefore the 3 percent flammability limit excludes reliability related contributions, which are addressed in the average flammability assessment. The specific risk requirement may be met by conducting a separate Monte Carlo analysis for each of the specific phases of flight during warmer day conditions defined in the special conditions, without including the times when the FRM is not available because of failures of the system or dispatch with the FRM inoperative.

Inerting System Indications

Fleet average flammability exposure involves several elements, including—

- The time the FRM is working properly and inerts the tank or when the tank is not flammable;
- The time when the FRM is working properly but fails to inert the tank or part of the tank, because of mission variation or other effects;
- The time the FRM is not functioning properly and the operator is unaware of the failure; and
- The time the FRM is not functioning properly and the operator is aware of the failure and is operating the airplane for a limited time under MEL relief.

The applicant may propose that MMEL relief is provided for aircraft operation with the FRM unavailable; however, it is considered a safety system that should be operational to the maximum extent practical. Therefore, these special conditions include reliability and reporting requirements to enhance system reliability so that dispatch of airplanes with the FRM inoperative would be very infrequent. Cockpit indication of the system function that is accessible to the flightcrew is not an explicit requirement, but may be required if the results of the Monte Carlo analysis show the system cannot otherwise meet the flammability and reliability requirements defined in these special conditions. Flight test demonstration and analysis will be required to demonstrate that the performance of the inerting system is effective in inerting the tank during those portions of ground and the flight operations where inerting is needed to meet the flammability requirements of these special conditions.

Various means may be used to ensure system reliability and performance. These may include: System integrity monitoring and indication, redundancy of components, and maintenance actions. A combination of maintenance indication and/or maintenance check procedures will be required to limit exposure to latent failures within the system, or high inherent reliability is needed to assure the system will meet the fuel tank flammability requirements. The applicant's inerting system does not incorporate redundant features and includes a number of components essential for proper system operation. Past experience has shown inherent reliability of this type of system would be difficult to achieve. Therefore, if system maintenance indication is not provided for features of the system essential for proper system operation, system functional checks at appropriate intervals determined by the reliability analysis will be required for these features. At a minimum, proper function of essential features of the system should be validated once per day by maintenance review of indications or functional checks, possibly prior to the first flight of the day. The determination of a proper interval and procedure will follow completion of the certification testing and demonstration of the system's reliability and performance prior to certification.

Any features or maintenance actions needed to achieve the minimum reliability of the FRM will result in fuel system airworthiness limitations similar to those defined in § 25.981(b). Boeing will be required to include in the instructions for continued airworthiness (ICA) the replacement times, inspection intervals, inspection procedures, and the fuel system limitations required by § 25.981(b). Overall system performance and reliability must achieve a fleet average flammability that meets the requirements of these special conditions. If the system reliability falls to a point where the fleet average flammability exposure exceeds these requirements, Boeing will be required to define appropriate corrective actions, to be approved by the FAA, that will bring the exposure back down to the acceptable level.

Boeing proposed that the FRM be eligible for a 10-day MMEL dispatch interval. The Flight Operations Evaluation Board (FOEB) will establish the approved interval based on data the applicant submits to the FAA. The MMEL dispatch interval is one of the factors affecting system reliability analyses that must be considered early in the design of the FRM, prior to FAA approval of the MMEL. Boeing requested that the authorities agree to use of an MMEL inoperative dispatch interval for design of the system. Boeing data indicates that certain systems on the airplane are routinely repaired prior to the maximum allowable interval. These special conditions require that Boeing use an MMEL inoperative dispatch interval of 60 hours in the analysis as representative of the mean time for which an inoperative condition may occur for the 10-day MMEL maximum interval requested. Boeing must also include actual dispatch inoperative interval data in the quarterly reports required by Special Condition III(c)(2). Boeing may request to use an alternative interval in the reliability analysis. Use of a value less than 60 hours would be a factor considered by the FOEB in establishing the maximum MMEL dispatch limit. The reporting requirement will provide data necessary to validate that the reliability of the FRM achieved in service meets the levels used in the analysis.

Appropriate maintenance and operational limitations with the FRM inoperative may also be required and noted in the MMEL. The MMEL limitations and any operational procedures should be established based on results of the Monte Carlo assessment, including the results associated with operations in warmer climates where the fuel tanks are flammable a significant portion of the FEET when not inert. While the system reliability analysis may show that it is possible to achieve an overall average fleet exposure equal to or less than that of a typical unheated aluminum wing tank, even with an MMEL allowing very long inoperative intervals, the intent of the rule is to minimize flammability. Therefore, the shortest practical MMEL relief interval should be proposed. To ensure limited airplane operation with the system inoperative and to meet the reliability requirements of these special conditions, appropriate level messages that are needed to comply with any dispatch limitations of the MMEL must be provided.

Confined Space Hazard Markings

Introduction of the FRM will result in NEA within the center wing fuel tank and the possibility of NEA in compartments adjacent to the fuel tank if leakage from the tank or NEA supply lines were to occur. Lack of oxygen in these areas could be hazardous to maintenance personnel, the passengers, or flightcrew. Existing certification requirements do not address all aspects of these hazards. Paragraph II(f) of the special conditions requires the applicant to provide markings to emphasize the potential hazards associated with confined spaces and areas where a hazardous atmosphere

could be present due to the addition of an FRM.

For the purposes of these special conditions, a confined space is an enclosed or partially enclosed area that is big enough for a worker to enter and perform assigned work and has limited or restricted means for entry or exit. It is not designed for someone to work in regularly, but workers may need to enter the confined space for tasks such as inspection, cleaning, maintenance, and repair. (Reference U.S. Department of Labor Occupational Safety & Health Administration (OSHA), 29 CFR 1910.146(b).) The requirement in the special conditions does not significantly change the procedures maintenance personnel use to enter fuel tanks and are not intended to conflict with existing government agency requirements (*e.g.*, OSHA). Fuel tanks are classified as confined spaces and contain high concentrations of fuel vapors that must be exhausted from the fuel tank before entry. Other precautions such as measurement of the oxygen concentrations before entering a fuel tank are already required. Addition of the FRM that utilizes inerting may result in reduced oxygen concentrations due to leakage of the system in locations in the airplane where service personnel would not expect it. A worker is considered to have entered a confined space just by putting his or her head across the plane of the opening. If the confined space contains high concentrations of inert gases, workers who are simply working near the opening may be at risk. Any hazards associated with working in adjacent spaces near the opening should be identified in the marking of the opening to the confined space. A large percentage of the work involved in properly inspecting and modifying airplane fuel tanks and their associated systems must be done in the interior of the tanks. Performing the necessary tasks requires inspection and maintenance personnel to physically enter the tank, where many environmental hazards exist. These potential hazards that exist in any fuel tank, regardless of whether nitrogen inerting has been installed, include fire and explosion, toxic and irritating chemicals, oxygen deficiency, and the confined nature of the fuel tank itself. In order to prevent related injuries, operator and repair station maintenance organizations have developed specific procedures for identifying, controlling, or eliminating the hazards associated with fuel-tank entry. In addition government agencies have adopted safety requirements for use when entering fuel tanks and other confined spaces. These same procedures would be applied to the reduced oxygen environment likely to be present in an inerted fuel tank.

The designs currently under consideration locate the FRM in the fairing below the center wing fuel tank. Access to these areas is obtained by opening doors or removing panels which could allow some ventilation of the spaces adjacent to the FRM. But this may not be enough to avoid creating a hazard. Therefore, we intend that marking be provided to warn service personnel of possible hazards associated with the reduced oxygen concentrations in the areas adjacent to the FRM.

Appropriate markings would be required for all inerted fuel tanks, tanks adjacent to inerted fuel tanks and all fuel tanks communicating with the inerted tanks via plumbing. The plumbing includes, but is not limited to, plumbing for the vent system, fuel feed system, refuel system, transfer system and cross-feed system. NEA could enter adjacent fuel tanks via structural leaks. It could also enter other fuel tanks through plumbing if valves are operated or fail in the open position. The markings should also be stenciled on the external upper and lower surfaces of the inerted tank adjacent to any openings to ensure maintenance personnel understand the possible contents of the fuel tank. Advisory Circular 25.981–2 will provide additional guidance regarding markings and placards.

Affect of FRM on Auxiliary Fuel Tank System Supplemental Type Certificates

Boeing plans to offer a service bulletin that will install the FRM on existing in-service airplanes. Some in-service airplanes have auxiliary fuel tank systems installed that interface with the center wing tank. The Boeing FRM design is intended to provide inerting of the fuel tank volume of the 747 and does not include consideration of the auxiliary tank installations. Installation of the FRM on existing airplanes with auxiliary fuel tank systems may therefore require additional modifications to the auxiliary fuel tank system to prevent development of a condition that may cause the tank to exceed the 12 percent oxygen limit. The FAA will address these issues during development and approval of the service bulletin for the FRM.

Disposal of Oxygen-Enriched Air (OEA)

The FRM produces both NEA and OEA. The OEA generated by the FRM could result in an increased fire hazard if not disposed of properly. The OEA produced in the proposed design is diluted with air from a heat exchanger, which is intended to reduce the OEA concentration to non-hazardous levels. Special requirements are included in these special conditions to address potential leakage of OEA due to failures and safe disposal of the OEA during normal operation.

To ensure that an acceptable level of safety is achieved for the modified airplanes using a system that inerts heated fuel tanks with NEA, special conditions (per § 21.16) are needed to address the unusual design features of an FRM. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–03–08–SC for the Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes was published in the **Federal Register** on December 9, 2003 (68 FR 68563). Thirteen commenters responded to the notice.

General Comments

Comment: One commenter supports the special conditions but states that ignition source prevention must still be provided. The commenter believes that the combination of flammability reduction and ignition source prevention is the most effective means to prevent fuel tank explosions.

FAA Reply: The safety assessment required by Special Federal Aviation Regulation (SFAR) No. 88, Fuel Tank System Fault Tolerance Evaluation, identifies design and maintenance changes that are needed to prevent ignition sources in transport category airplanes. The FAA is developing a number of airworthiness directives (ADs) to address ignition sources resulting from single failures in all fuel tanks and combinations of failures in tanks that have been classified as high flammability. We will not issue ADs to address combinations of failures in high flammability tanks if the FRM is installed because of the significant improvement in fuel tank safety offered by the FRM required by this special condition. We are not considering a change to the current ignition prevention analysis requirements that include assuming a flammable ullage. No changes were made as a result of this comment.

Comment: Two commenters believe the special conditions for the FRM are

not appropriate because the special conditions are written to fit the applicant's proposed design of an inerting system to reduce flammability of fuel tanks and are therefore considered ''prejudiced.'' One of these commenters adds that regulatory guidance should be unprejudiced and available before development of any design.

FAA Reply: We do not concur. As stated earlier in this document, these special conditions are specific to certification of an FRM based on inerting technology. As discussed in AC 25.981–2, inerting, as well as other technologies such as cooling, is an acceptable means of compliance with § 25.981(c). No changes were made as a result of this comment.

Comment: Two commenters believe the limited FRM, as described in the special conditions, would not comply with the requirements of §§ 25.981(c) and 25.1309 for new airplane designs (post amendment 25–102) with high flammability fuel tanks.

FAA Reply: As stated earlier, these special conditions apply specifically to certification of an FRM for applicable Boeing Model 747 series airplanes and do not apply to new airplane designs. However, we have determined that an FRM that complies with these special conditions would meet the intent of § 25.981(c). No changes were made as a result of this comment.

Comment: One commenter would support rulemaking to investigate amending § 25.981 (and revising AC 25.981–2) to:

- Clarify that ''minimization of flammable vapors'' in accordance with § 25.981(c) is to be accomplished through design features ensuring the tank will have inherent low flammability (*e.g.* venting, cooling, control of heat transfer, etc.); and
- Eliminate the possibility of compliance for future airplane designs through the installation of a limited FRM.

FAA Reply: On February 17, 2004, the FAA Administrator announced plans to issue a notice of proposed rulemaking that will require approximately 3,800 Airbus and Boeing planes be fitted with systems that reduce the presence of flammable vapors in fuel tanks. This proposal could require airlines to install new systems to reduce fuel tank flammability on existing and newly produced larger passenger jets. We are also considering amending § 25.981(c) and revising AC 25.981–2 to further limit fuel tank flammability. No changes were made as a result of these comments.

Comment: The commenter requests that before proceeding with any further regulatory activities, the FAA should provide additional detailed information on whether SFAR 88 changes are sufficient to cover the requirements of § 25.981. The commenter believes that ''SFAR 88 meets the requirement of § 25.981(c)(2) and does not understand the need to also address § 25.981(c)(1).'' This commenter also states that harmonization with the European Aviation Safety Agency (EASA) on these special conditions is essential for industry.

FAA Reply: We do not concur with the commenter's first statement. A direct relationship between SFAR 88 and § 25.981(c)(1), or § 25.981(c)(2), does not exist. SFAR 88 addresses ignition source prevention, while § 25.981(c)(1) acknowledges an ignition source may be present under some remote circumstances. Section 25.981(c)(2) assumes that an ignition can occur—in essence that SFAR 88 was not successful and also flammable vapors are present—and requires that the resulting ignition of flammable vapor will not prevent continued safe flight and landing. The FAA has fully coordinated these special conditions with the JAA/EASA. No changes were made as a result of these comments.

Comment: One commenter notes that although the special condition requirements for system reliability and performance are very specific, they do not address the qualification standards that the system will have to meet. Additional guidance on this subject would be appropriate. Another commenter expresses concern about use of the terms ''intended'' and ''expected'' in the special conditions when relating to an FRM. It is the commenter's opinion that the use of these terms indicates that the applicant is not confident that their design ''will'' or ''shall'' contribute to the overall safety of the airplanes.

FAA Reply: We do not concur. In the preamble to the special conditions, we state that the applicant is required to show compliance with the applicable airworthiness regulations and special conditions. In part, the applicable regulations, § 25.1301 and § 25.1309, require the applicant to show that the equipment ''functions properly when installed'' and ''is designed to ensure that they perform their intended functions under any foreseeable operating condition.'' Irrespective of any wording in the preamble to the special conditions, the special conditions include requirements to address foreseeable specific safety issues that are not addressed by the current regulations. Any airplane that meets the requirements of the special conditions will maintain the level of safety intended by the applicable requirements of the Code of Federal Regulations (CFR). No changes were made as a result of these comments.

Comment: One commenter states that there are various statements made throughout the special conditions that refer to reliability and maintenance of the system. It is the commenter's opinion that these statements are specific to implementation, and the actual approach should be derived using standard methodology used for certification of the airplane.

FAA Reply: To achieve the desired safety level of the FRM, we believe the special condition requirements for determining reliability and maintainability of the FRM are necessary. This is to ensure that the FRM is an acceptable means by which the development of flammable vapors in the center wing tank is minimized as required by § 25.981. No changes were made as a result of this comment.

Comment: One commenter notes that ''inert'' is not defined consistently throughout the special conditions. The commenter suggests the use of only one definition and proposes the definition used in special condition paragraph I. Definitions. The same commenter also requests clarification if linear extrapolation of oxygen concentration can be used for aircraft ceilings above 40,000 feet, and clarification of the difference between the terms ''bulk'' and ''bulk average.''

FAA Reply: We concur that the definition of inert needs to be consistent throughout the special conditions and have therefore modified the definition of inert in the preamble to incorporate the definition of inert provided in paragraph I. Definitions of the special conditions. With respect to aircraft altitudes above 40,000 feet, we have added that linear extrapolation can continue for oxygen concentration from 14.5 percent at 40,000 feet to the required operating altitude. Concerning the use of bulk and bulk average in the special conditions, we have modified the preamble and special conditions to consistently use the term ''bulk average'' when referring to the fuel temperature or oxygen concentration within the fuel tank.

Comment: The commenter requests that the FAA clarify if the FRM is a safety enhancement system or a safety system. The commenter notes that in the preamble discussion of the ''Inerting System Indication,'' the FAA states that the applicant may propose master minimum equipment list (MMEL) relief

be provided for airplane operation with the FRM unavailable. The system, however, is considered a safety system that should be operational to the maximum extent practical. If this system is considered a safety system, then a form of redundancy will have to be built in. At this time, the applicant's design does not show any redundancy.

FAA Reply: The FRM is a safety system designed to provide an additional layer of protection to the ignition prevention means already in place. The system by itself is not intended to be fully redundant since it provides a second layer of protection. The FRM is intended to be a safety enhancement system that provides an additional layer of protection by reducing the exposure to flammable vapors in the heated center wing fuel tank. This protection, when added to ignition prevention measures, will substantially reduce the likelihood of future fuel tank explosions in the fleet. The applicant has proposed a 10-day MMEL relief period, but the Flight Operations Evaluation Board (FOEB) will determine and approve the appropriate MMEL intervals based on data the applicant submits to the FAA. The applicant must show that the fleet average flammability exposure of a tank with an FRM installed is equal to or less than 3 percent, including any time when the system is inoperative. No changes were made as a result of these comments.

Comment: One commenter says the cost of the FRM is substantial and justification for it is debatable. The commenter believes the FRM will put a heavy economic burden on the slowly recovering airline industry and only supports the adoption of an FRM on new type designs and newly built airplanes as an improvement in fuel system safety. This commenter also says that considering the potential affects of this subject on the European airline industry, joint European position activity is critical to ensure that decisions are based on safety grounds and not on political motivations.

FAA Reply: We do not concur with the commenter regarding the impact of cost associated with the issuance of the special conditions. These special conditions are unique to the applicant's certification of an FRM for the applicable Boeing Model 747 series airplanes and do not mandate that an FRM must be added to an operator's 747 fleet. They have been fully harmonized with EASA. The FAA announcement of issuance of a notice of proposed rulemaking that would propose retrofit and production incorporation of FRM into U.S-registered airplanes is a separate rulemaking effort that will require a cost benefit analysis and will be published for public comment. No changes were made as a result of this comment.

Comment: One commenter notes that the applicant has planned a 3-month, in-service evaluation (ISE) of the FRM. It is the opinion of two other commenters that a 4,000-hour (12 month) ISE should be specified before certification of the FRM because—

- It adds complexity,
- It has not yet been retrofitted in an in-service airplane,
- It has no proven track record for reliability, and
- Ground and flight tests are not sufficient to demonstrate overall reliability of the system.

The commenters say that maintenance and performance features of the system were designed to support a 10-day relief under the MMEL program. If the demonstrated performance and reliability of the system meet design objectives, then the FAA should support the planned relief. Another commenter recommends a one-year in-service evaluation (ISE) program following the first installation of an FRM and prior to FRM installation on a production airplane. This commenter says that past experience has shown reliability and system degradation by oil contamination scenarios, with the engine and APU being the source, and carbon particle buildup on components similar to those required by the proposed FRM, due to airport and airplane turbine exhausts. This commenter believes that one year would be an adequate time for the manufacturer to develop and provide corrective actions for discrepancies or reliability issues with the FRM that are identified during the ISE program.

FAA Reply: We do not concur with the commenters. The industry commonly conducts ISE through cooperative efforts between the type certificate holder and the airlines prior to fleetwide introduction of changes. While the FAA agrees an ISE might be appropriate, we traditionally do not mandate it. An ISE can be part of a manufacturer's incorporation strategy for optional equipment. FAA certification of a system is required before an ISE can be conducted on a U.S.-registered transport category airplane; therefore, an ISE is not related to certification requirements. The reliability reporting requirements in the special conditions will provide data to determine if actions are needed to correct discrepancies and improve system reliability after certification of the system. No changes were made as a result of these comments.

Comment: Three commenters request that the FAA consider 9 percent as the maximum oxygen concentration at sea level. One commenter disagrees with the premise that the wing fuel tanks offer an acceptable minimum level of flammability exposure and is concerned about using this minimum level for development of inerting systems. The commenters believe that the maximum oxygen concentration of 12 percent at sea level should be considered as a level of reduced flammability rather than inert, and that 9 percent should be used as the long-term goal for defining a tank as inert. Another commenter states that 12 percent oxygen concentration will not protect the center or wing fuel tanks from external hazards and that 9 percent should be used to protect the tanks. The commenter requests clarification of why 12 percent oxygen concentration at sea level is specified in the special conditions instead of the maximum 9 percent.

Three commenters want the minimum oxygen concentration percentage at sea level to be 10 percent. They refer to paragraph 7(a)(1) of AC 25.981–2, which reads: ''An oxygen concentration of 10 percent or less by volume is acceptable for transport airplane fuel tanks inerted with nitrogen, without additional substantiation.'' One commenter believes this acceptable oxygen concentration establishes a minimum acceptable performance standard in terms of the threat (ignition source energy), and 10 percent or less should be the average design concentration for each fuel cell with no area at a concentration greater than 11.5 percent. Another commenter says that 10 percent contradicts the definition of ''inert,'' as proposed, and would like the FAA to provide the acceptable oxygen concentration level (percentage by volume) and the fundamental justification for this level. Minimum performance inherent in the AC method must be guaranteed. The final commenter would like to know if AC 25.981–2 will be revised if the FAA believes that 12 percent is adequate.

Two commenters referenced applying an adequate safety factor to the maximum 12 percent oxygen concentration limit. One commenter referenced various reports they believe support the use of a 20 percent safety margin that should be applied to the FRM. The commenter states that the FAA uses safety factors in design of aircraft structure, components, and systems and to deviate from good design practice is not in the interest of public

safety. This commenter suggests that the FAA follow industry practice.

FAA Reply: We do not concur with the commenters. The special condition requirement of 12 percent maximum oxygen concentration at sea level is based on FAA oxygen content testing and review of other test data, such as Navy gunfire tests. These data show that 12 percent oxygen concentration will prevent a fuel tank explosion for airplane system failure and malfunction-generated ignition sources. Additionally, data from the Navy testing provided in document NWC TP 7129, ''The Effectiveness of Ullage Nitrogen-Inerting Systems Against 30 mm High-Explosive Incendiary Projectiles,'' dated May 1991, shows that 12 percent oxygen concentrations are also very effective at mitigating the effects of a high-energy incendiary projectile puncturing the fuel tank ullage.

We plan to revise AC 25.981–2 to include the definition of inert that is used in these special conditions.

Summary

Comment: The commenter refers to the statement in the summary paragraph that the regulations do not contain adequate or appropriate safety standards. The commenter considers this statement invalid and fails to comprehend what is missing in the regulations to adequately address certification of an FRM and why special conditions would be required. The commenter agrees with the FAA that the FRM installation must comply with § 25.981 at amendment 25–102, the fuel vent and exhaust emission requirements of part 34, and the acoustical requirements of § 21.93(b). The commenter also believes that §§ 25.831(b), 25.1301, 25.1307, 25.1309, 25.1316, 25.1321, 25.1322, 25.1357, 25.1431, 25.1438, and 25.1461 might also apply.

FAA Reply: Many of the regulations quoted by the commenter are applicable, and compliance with these requirements must be shown for certification of the FRM for the applicable Boeing Model 747 series airplanes. However, part 25 regulations do not contain adequate or appropriate safety standards for the performance of the FRM. The basis to issue special conditions is addressed in § 21.16. No changes were made as a result of this comment.

Background

Comment: This commenter believes ignition source prevention has failed. The commenter points to the 1997 notice, in which the FAA requested industry comments on the mitigation of hazards posed by flammable fuel tank vapors. In that notice, the FAA cites 13 fuel tank explosion/ignition events and three non-operational events, for a total of 16 during the 1959–1996 timeframe, before the Thailand B737 center wing tank explosion. The commenter says that since the ignition sources for the last three accidents are unknown, an FRM must safeguard against unknown ignition sources of unknown ignition energy. A significant number of single failures and combinations of failures can result in ignition sources within fuel tanks; therefore an acceptable system must safeguard against all (except extremely improbable) ignition sources within the fuel tank. The commenter also notes that approximately 550 people lost their lives in these explosions.

FAA Reply: The ignition prevention safety reviews conducted following the 1996 accident revealed many previously unknown single component failures that could result in ignition sources within the fuel tanks. We will issue additional ADs, where necessary, to require design or maintenance actions to address these newly discovered deficiencies. The safety reviews also identified combinations of failures that could result in an ignition source. Because service experience and analysis indicated that these combinations were less likely to occur, we determined that it was not practical to address them in existing airplanes. The safety reviews also confirmed that unforeseen design and maintenance errors exist and result in development of ignition sources. As discussed earlier in this document, the NTSB recommendations included not just preventing ignition sources, but also reducing fuel tank flammability. The NTSB concluded that ''a fuel tank design and certification philosophy that relies solely on the elimination of all ignition sources, while accepting the existence of fuel tank flammability, is fundamentally flawed because experience has demonstrated that all possible ignition sources cannot be determined and reliably eliminated.'' Therefore, the purpose of these special conditions is not to address additional rulemaking for prevention of ignition sources but to certificate a specific fuel tank FRM for Boeing Model 747 series airplanes. No changes were made as a result of this comment.

Comment: The commenter states that service experience of airplanes certificated to the earlier standards shows that ignition source prevention alone has not been totally effective at preventing accidents. The commenter notes that after the TWA 800 accident, fuel tank system rulemaking activity started in such an excessive way that the FAA has mandated over 50 ADs and proposed changes to part 25. After other fuel tank explosion accidents prior to the flight TWA 800 accident, the FAA did not change the design standards of fuel tank systems. SFAR 88 was the first real rulemaking activity where the FAA mandated ignition source reduction throughout the fleet. Those changes are not incorporated at this time. The commenter therefore believes the FAA cannot say that the past service experience for ignition source prevention alone has not been totally effective in preventing accidents. Currently, the results of ignition source prevention measures are unknown.

This same commenter also believes that the addition of SFAR 88 and an FRM will not reduce the chance of maintenance induced errors and may have an opposite effect in that it could introduce the risk of further human factors errors.

FAA Reply: We do not concur. Past experience shows that detailed design reviews, similar to those required by SFAR 88, have not been effective at eliminating ignition sources. Following an accident in 1976, we conducted an exhaustive investigation and design review of the lightning protection features of the fuel tank system, including full scale testing of the wing. From this, we mandated design changes to improve lightning protection of the system. Subsequent review of the airplane design required by SFAR 88 revealed the need for additional bonding modifications that will be mandated. Failure of other components within the fuel tank system and components adjacent to the fuel tank could also cause ignition sources. These examples show that it is very difficult to identify all ignition sources during design. Additionally, past experience also indicates unforeseen design and maintenance errors can result in development of ignition sources.

We have issued multiple ADs to address ignition source prevention and believe that implementation of design changes intended to prevent ignition sources identified by SFAR 88 will prevent about 50 percent of future fuel tank explosions. The more significant changes to fuel tank systems resulting from the SFAR 88 activity include:

- Features to prevent dry running of fuel pumps within the fuel tanks;
- Ground fault protection of fuel pump power supplies for pumps or wires exposed to the fuel tank ullage;
- Additional electrical bonds on some components;
- Electrical energy limiters on wiring entering fuel tanks that are normally

emptied and located within the fuselage contour;

• Electrical bond integrity checks; and

• Improved maintenance programs.

While we believe these modifications and maintenance program changes will significantly improve safety, the results of the safety reviews conducted as part of SFAR 88 show there is uncertainty in the effectiveness of ignition source prevention alone. The addition of an FRM will significantly improve fuel tank safety by reducing or preventing flammable vapors in the fuel tank and will incorporate fail-safe features into the fuel tank system that account for design and maintenance errors. No changes were made as a result of these comments.

Fuel Properties

Comment: The commenter says that the new generation airplanes (B737NG, B757, B767, and B777) are not certified to use Jet B or JP–4 wide-cut fuels. The commenter also points out that AD 85–11–52R1 prohibits the use of Jet B and JP–4 on Boeing Model 737–300 series airplanes.

FAA Reply: We do not concur. While wide-cut fuels are not commonly used in the world fleets, some of the airplanes mentioned do allow at least limited use. Other models are certified for unrestricted use. Significant use of lower flash-point fuels could affect the percentage of time the fuel tanks are flammable. Therefore, to achieve consistent flammability exposure, the flash point of the approved fuels must be considered in the analysis used for demonstrating compliance. No changes were made as a result of these comments.

Fire Triangle

Comment: The commenter points to the FAA statement, ''Because of technological limitations in the past, the FAA philosophy regarding the prevention of fuel tank explosions to ensure airplane safety was to only preclude ignition sources within fuel tanks.'' It is the commenter's opinion that there never was a technological limitation. The commenter refers to a test the FAA conducted in the 1970s of a nitrogen fuel tank inerting system on a DC–9 airplane, and that system maintained oxygen concentration less than 8 percent under all normal and emergency flight conditions. The commenter also listed other airplanes that use NEA, liquid nitrogen, and explosion suppressant systems to minimize fuel tank flammability. The commenter further points out that in March 2002, the Aviation Rulemaking Advisory Committee (ARAC) concluded that fuel tank inerting may provide safety benefits and warrants continued industry and government research. Then, in December 2002, an on-board nitrogen generator intended to pump the inert gas into an emptying fuel tank was unveiled. The commenter states that all of this demonstrates the capabilities of industry.

FAA Reply: While we agree with the commenter that the earlier systems were available, we do not agree that they were practical for commercial transport airplanes because of the cost, complexity, weight, and poor reliability of the systems. The FRM that will be certified for installation on Boeing Model 747 series airplanes reduces fuel tank flammability by inerting the tanks with nitrogen using hollow fiber membrane technology that does not require installation of an air compressor to produce NEA, thereby reducing cost, complexity, and weight. As previously discussed, more recent research has found that a simpler inerting system that reduces the oxygen concentration of the fuel tank to 12 percent or less at sea level is sufficient in achieving the desired safety level. No changes were made as a result of these comments.

Fuel Tank Harmonization Working Group

Comment: The commenter points to several references throughout the preamble discussion to a flammability exposure of 2 to 4 percent and requests that this be changed to 5 percent. The commenter says that the ARAC, in their 1998 report, estimated wing fuel tank exposure as 5 percent. The commenter also points to the reference to 3 percent flammability value for the wing fuel tanks in the preamble discussion of ''Definition of Transport Effects'' and requests that this also be changed to 5 percent.

FAA Reply: We concur in part. Although the ARAC report did identify a flammability exposure of 2 to 6 percent in the Task Group 8 section, in other locations of the report a generalized value of 5 percent was used. In the original discussion in the proposed special conditions, we incorrectly referenced a range of 2 to 4 percent instead of the actual value of 2 to 6 percent. We consider the estimated range that was based on a flammability analysis of a number of different airplane models to be more representative of the wing fuel tank flammability range across various airplane models. No changes were made as a result of these comments.

Comment: The commenter says that the data presented in the discussion of the Fuel Tank Harmonization Working Group should be for historical reasons, and the criteria used for determining the need for an FRM should be AC 25.981–2.

FAA Reply: We do not concur. The purpose of AC 25.981–2 is to provide guidance for demonstrating compliance with § 25.981(c) to:

• Minimize fuel tank flammability; and

• Mitigate the hazards if ignition of the fuel vapors occurs.

The AC does not provide criteria to determine if a system is required to reduce flammability in fuel tanks.

We infer from the commenter's remarks that they believe these special conditions will mandate the installation of an FRM, which is not the case. These special conditions do not represent rulemaking to mandate the reduction of a fuel tank flammability system. Instead, they are required to support certification of novel features of the FRM not addressed by existing regulations, and include additional requirements to address warm day operations during ground, takeoff, and climb portions of the flight where previous accidents have occurred. No changes were made as a result of these comments.

Comment: One commenter considers the flammability range of l5 to 30 percent of fleet operating time for fuel tanks containing flammable vapors, as documented in the ARAC report, a large range. This range indicates that the actual percent depends on assumptions. This commenter believes that a Monte Carlo analysis should not be a part of the certification process as it is an analysis that is based on flawed assumptions. The commenter considers use of statistical methods more consistent with the FAA philosophy for fail-safe designs. The commenter believes that aviation safety would be undesirably low if a Monte Carlo analysis was used for the design and certification of navigation and guidance systems, ground proximity warning systems, weather radar, wind shear avoidance, engine fire protection, etc. Another commenter also contends that the assumptions used in the Monte Carlo analysis are not supported by historical data.

FAA Reply: We do not concur with the first comment. The 15–30 percent addresses the range of average flammability exposures across the airplane models in the fleet. Specific airplane models will have a fixed average flammability exposure. We do agree that variations in assumptions for the analysis could result in large differences in the results of the

flammability analysis. For this reason, the special conditions incorporate specific parameters that must be used when determining fuel tank flammability. The Monte Carlo methodology has been used in a wide range of industries to address safety concerns. Previous ARAC activities recommended use of the Monte Carlo method for calculating average fuel tank flammability exposure. This methodology has recently been used by industry to evaluate the flammability exposure of fuel tanks as part of the SFAR 88 activities. We therefore expect the applicant as well as industry already have a good understanding of how to use the model. No changes were made as a result of these comments.

FAA Rulemaking Activity

Comment: The commenter notes that the ARAC recommendations referenced in this discussion did not use the word ''reduction.'' The commenter believes that the word ''reduction'' in § 25.981(c) needs further study. The commenter also says that the 2 to 4 percent flammability of unheated aluminum wing fuel tanks should not be used as a criterion in the special conditions, and notes that AC 25.981–2 does not specifically address the center wing fuel tank like the special conditions but includes all tanks (including wing tanks).

FAA Reply: We do not concur with the comment concerning the use of unheated aluminum wing fuel tanks as the criterion for an acceptable level of fuel tank flammability. AC 25.981–2 does provide clarification under section 5, paragraph (d)(3), that the intent of § 25.981 is ''to require that the exposure to formation or presence of flammable vapors is equivalent to that of an unheated wing tank in the transport airplane being evaluated.'' The special conditions incorporate the intent of § 25.981(c) and also include additional requirements for warm day conditions where previous accidents have occurred. The special conditions also include requirements to address novel design features that are not covered under the applicable airworthiness standards of part 25. No changes were made as a result of these comments.

Fuel Tank Inerting

Comment: Two commenters say the applicant's proposed design does not include an essential verification system (NEA sensors and indication) to ensure that the appropriate nitrogen concentrations will be directed into the fuel tank to displace the fuel vapors in the ullage space. One commenter compares this to the statement in the discussion of ''Criteria for Inerting'' that the combination of ignition prevention and reduction of flammable vapors in the tank will substantially reduce the number of future fuel tank explosions.

FAA Reply: We do not concur. To comply with the special conditions, the applicant must demonstrate that the FRM meets the specific performance and reliability requirements. An indication system would be required if it is shown that the FRM cannot meet these requirements unless one is installed. No changes were made as a result of these comments.

Comment: The commenter requests that the reference to ''using the size difference'' in the first paragraph be changed to ''using the absorption difference,'' as this would more accurately reflect how hollow fiber membranes function.

FAA Reply: We concur with the commenter and revised the sentence to read: ''* * * the hollow fiber membrane material uses the absorption difference between the nitrogen and oxygen molecules to separate the NEA from the oxygen.''

Comment: The commenter says that it does not have to be pressurized air from the airplane engines that is used to produce NEA; compressed air from any source can be used.

FAA Reply: We agree, however these special conditions address a specific system design for the applicable Boeing Model 747 series airplanes using bleed air from the airplane engines to generate NEA. We recognize there may be other means to achieve the same goal. No changes were made as a result of this comment.

Comment: The commenter contends that technology has not kept up with the need to eliminate the need for stored nitrogen because hollow fiber technology does not produce enough NEA to inert the center tank during all phases of flight, including descent. Hollow fiber technology, as described in the special conditions, will not inert the wing tanks.

FAA Reply: We do not concur. The applicant has selected hollow fiber technology as a means to produce NEA to inert the center wing tank on Model 747 series airplanes. The applicant must show that the FRM will inert the center tank. Hollow fiber technology could be used to inert wing fuel tanks; however, there is no requirement in the special conditions to do so. No changes were made as a result of this comment.

Criteria for Inerting

Comment: The commenter requests that this discussion be revised as shown below. The commenter says the FAA proposed wording implies that the 9 percent military and 12 percent commercial oxygen concentration values are intended to be equivalent. The 9 percent is a military limit for zero exposure. The 12 percent is a benchmark for evaluating minimization of flammability exposure, equivalent to wing tanks.

Criteria for Inerting

Earlier fuel tank inerting designs produced for military applications were based on defining ''inert'' as a maximum oxygen concentration of 9 percent. One major finding from the research and development efforts conducted by the FAA was the determination that the 9 percent maximum oxygen concentration limit established to protect military airplanes was significantly lower than necessary to prevent significant pressure rise for the majority of ullage conditions. This FAA research supports a value of 12 percent as a benchmark at sea level for determining when the likelihood of significant pressure rise is low. The test results are currently available on FAA Web site: www.fire.tc.faa.gov, and will be published in FAA Technical Note 'Limiting Oxygen Concentrations Required to Inert Jet Fuel Vapors Existing at Reduced Fuel Tank Pressures,' report number DOT/FAA/AR–TN02/79.

It should be noted that the 12% benchmark is not intended to claim that ignition is impossible below 12%. 14 CFR 25.981 (c) requires minimization of flammability, not elimination. ARAC evaluations concluded complete elimination of flammability was impractical and unnecessary. 14 CFR 25.981(c) was based on reducing flammability exposure to equal or less than wing tanks, which have an acceptable safety history. The 12% benchmark is used to divide exposure time when significant pressure rise is unlikely, from exposure time when significant pressure rise is more likely. Testing indicates there is also significant ability to inhibit ignition for many fuel vapor conditions when oxygen content is above 12%, but no credit is taken for these conditions.

As a result of this research and the 12 percent benchmark, the quantity of nitrogen-enriched air that is needed to inert commercial airplane fuel tanks was reduced. This reduction in nitrogen-enriched air, coupled with advancements in design technology, facilitates the development of an effective flammability reduction system that approaches simple and practical.''

FAA Reply: We do not concur. The 12 percent requirement in the special conditions is based on testing of flammability using electrical ignition sources caused by airplane system failures. It is not intended to address combat threats. However, data from the Navy tests concludes that inerting to 9 percent oxygen has little benefit over 12 percent for protection of fuel tanks from overpressure caused by ignition from 30 millimeter Hi energy incendiary rounds.

No changes were made as a result of this comment.

Type Certification Basis

Comment: The commenter points to two statements concerning compliance with § 25.981, which appear to be confusing regarding applicability to the FRM. First, the commenter asks for clarification as to the extent to which § 25.981 is applied to the system. The commenter assumes it is only those areas exposed to fuel vapor under normal operation. The commenter also points to paragraph two of the ''Novel or Unusual Design Features,'' which states that compliance is required for the changed aspects of the airplane by showing that the FRM does not introduce any additional potential ignition risk into the fuel tanks.

FAA Reply: There are two aspects of the FRM concept. First, it is the means chosen to achieve the requirements of § 25.981(c) to minimize fuel tank flammability for the applicable 747 series airplanes. In this case, the applicant chose to introduce NEA into the center wing tank and assure that it is dispersed throughout. Having made that choice, the applicant is required to ensure that the changes introduced by the system (*i.e.*, FRM) do not introduce any potential ignition sources into the tank. No changes were made as a result of this comment.

Comment: The commenter says that compliance with § 25.981 applies to certification of fuel tanks and not to the installation of an inerting system, although fuel tank inerting may be one way to show compliance with § 25.981(c)(1).

FAA Reply: We do not concur. The applicant has proposed to voluntarily comply with § 25.981(c), amendment 25–102, for certification of the performance of an FRM to reduce flammability in the center wing fuel tanks of Model 747 series airplanes. Additionally, as stated in the preamble to these special conditions, the applicant must also ensure that installation of an FRM will meet the ignition source prevention requirements of § 25.981(a) and (b), as well as all the other applicable part 25 regulations. No changes were made as a result of this comment.

Comment: The commenter requests that the 747-Classics effectivity be removed from the special conditions. The commenter says that few 747-Classics remaining in service may fall within the total 3 percent exposure criteria, and failing that should pose a far lower risk for the following reasons:

- The majority of ignition reduction modifications (IRM), including the improved maintenance procedures, will be implemented prior to any reasonable FRM compliance date;
- AD 98–20–40 fuel quantity indicating system protection upgrade has been fully incorporated on all 747-Classics; and
- With the two 737 accidents, it appeared that the center wing tank (CWT) fuel pumps were inadvertently left running with an empty CWT, and although it could not be confirmed that the pumps were at fault, the IRM requirement to automatically (or otherwise) shut pumps off at low pressure will eliminate this possible ignition source.

There may be an argument that the older airplanes are at a greater risk and therefore should be FRM protected, but the historical events and sample in-tank inspections tend to rebuff this proposition.

FAA Reply: We disagree with the commenter that the center wing fuel tank on 747 Classic airplanes falls within the 3 percent fleet average flammability exposure criteria because initial flammability exposure analyses of these airplane models has shown the flammability to be well above 3 percent. We estimate there are currently about 95 747–100, –200, and –300 airplanes in service today in the United States. Though ignition source prevention ADs have been incorporated on these airplanes and additional ADs will be incorporated as a result of SFAR 88 rulemaking, as we said earlier in this document experience demonstrates that all possible ignition sources cannot be determined and reliably eliminated. Reducing or preventing flammable vapors from forming in high flammability fuel tanks will significantly improve fuel tank safety. These special conditions support certification of the applicant's FRM design for possible installation on Boeing Model 747 series airplanes. These special conditions do not mandate any changes to current airplanes. No changes were made as a result of these comments.

Novel or Unusual Design Features

Comment: The commenter requests that the phrase ''by showing that fuel tanks'' in the second paragraph of this discussion be deleted because the beginning of the sentence establishes the requirement to comply with § 25.981(a), and (b). The method of compliance is the applicant's responsibility.

FAA Reply: We do not concur with the commenter. This last phrase provides a condensed explanation to the reader of what is required for compliance with § 25.981(a) and (b). No changes were made as a result of this comment.

Comment: This comment concerns the discussion of how the applicant proposes to operate the FRM. The commenter says the applicant must be allowed the freedom to design the system and must ensure that all features of the FRM are addressed properly so that hazardous conditions do not occur and the system complies with §§ 25.1301 and 25.1309 and other applicable requirements.

Another commenter requests that the system description be replaced by the following to focus on requirements and not prescribe design:

> The proposed FRM uses a nitrogen generation system (NGS). Engine bleed air will flow through an air separation module (ASM) that will separate the air stream into nitrogen-enriched air (NEA), which will be supplied to the center fuel tank, and oxygen-enriched air (OEA), which will be exhausted overboard. The FRM will also include modifications to the fuel vent system. Certain features of the FRM may introduce a hazard to the airplane if not properly addressed.

FAA Reply: We do not concur with the commenters. This section of the special conditions preamble appropriately defines what the novel or unusual design features of the FRM are that require special conditions under § 21.16. No changes were made as a result of these comments.

Comment: This commenter says the special conditions do not adequately address the descent control valve function as it relates to the high flow versus low flow mode. The Monte Carlo analysis is not based on test data or historical data to predict the effectiveness of the NGS on descent.

FAA Reply: We do not concur. The special conditions require that the applicant validate the inputs to the Monte Carlo analysis by ground and flight tests and substantiate that distribution of NEA is effective at inerting the fuel tank for the performance conditions required. No changes were made as a result of these comments.

Comment: It is the commenter's opinion that the proposed 10-day MMEL relief for the system is unjustified. The commenter says all components are Line Replaceable Units (LRU) that can be replaced within ''typical'' turn around time. A long relief time defeats the purpose of the system. If limited dispatch relief is granted, then it should be restricted to conditions (cold temperature) in which development of flammable vapors in the fuel tank is of low probability. The commenter points to AC 25.981–2,

paragraph 4(h), which addresses limited operations based on outside air temperature.

FAA Reply: The special conditions do not approve an MMEL dispatch interval. As stated previously, even though the applicant has proposed a 10-day MMEL dispatch interval, the Flight Operations Evaluation Board (FOEB) will determine and approve the appropriate MMEL relief intervals based on data submitted by the applicant. The applicant must show that the fleet average flammability exposure of a tank with an FRM installed is equal to or less than 3 percent, including operating time with an FRM. No changes were made as a result of these comments.

Comment: This commenter says the MMEL procedure is a result of system design (safety system or not, redundancy, etc.) and reliability of the system. It is up to the applicant to design their system to satisfy both the regulations and their customers.

FAA Reply: We concur. The special conditions require the applicant to submit data that show compliance with the special conditions for their proposed MMEL dispatch interval. The FOEB will assess the data in determining if the interval is appropriate. No changes were made as a result of this comment.

Comment: The commenter contends that the existing technology for hollow fiber technology presently has a mean time between failure (MTBF) of less than 2,000 hours, which is different than the 5,000 hours identified in this section.

FAA Reply: To comply with the specific reliability requirements, the applicant will have to consider the MTBF or life limit of the hollow fiber technology in their FRM design. The design and compliance with the special conditions will dictate what the MTBF will be. No changes were made as a result of this comment.

Discussion

Comment: Three commenters contend that the statement ''* * * due to factors such as the limited availability of bleed air and electrical power, it is not considered practical at this time to develop systems for retrofit * * *'' is not appropriate and is incorrect. One commenter says this issue would be better addressed in documentation and discussion rather than this section of the special conditions. The discussion should be limited to the issues considered and the data presented in the proposed special conditions. The second commenter says that on all commercial airplanes during normal operation (all engines operating and all generators operating), excess bleed-air and electrical power is available. The last commenter requests removal of the words ''Since amendment 25–102 was adopted,* * * it is not considered practical at this time to develop systems for retrofit into existing airplane designs that can maintain a non-flammable tank ullage in all fuel tanks or during all operating conditions.'' The commenter says the wording suggests that a more stringent requirement than that established by amendment 25–102 has been demonstrated to be practical. The FAA has not proposed, substantiated, or adopted rulemaking to support this statement. Changes to the requirements of § 25.981(c) are not the subject of these special conditions.

FAA Reply: We do not concur with the commenters but believe clarification is needed to fully understand the context of the statement that is at issue. As stated earlier, the FAA Administrator has made public statements concerning our intention to propose rulemaking that would amend § 25.981(c). During the public process following issuance of any proposal, comments will be welcome. The purpose of this statement in the special conditions is to provide justification for the level of performance required within the proposal. Although the complexity and sizing of inerting technology has been reduced such that it is a viable method for reduction of flammability in fuel tanks, there are still restrictions in existing airplanes today that would limit an inerting system from being 100 percent effective at inerting the fuel tank during all operating conditions. No changes were made as a result of these comments.

Comment: One commenter expresses concern that an FRM that complies with § 25.981(c), amendment 25–102, may not preclude fuel tanks from routinely being flammable under the specific operating conditions present when recent accidents occurred. The commenter says that if the FAA believes the above statement is true, then it has not specified the right regulations. The commenter believes a repeat of the Philippine, TWA, or Thai incidents would be prevented by compliance with § 25.981(c).

FAA Reply: The FRM is intended to add an additional layer of safety for high flammability fuel tanks by reducing the existence of flammable vapors in the center wing tank. It is important to recognize that this system does not totally eliminate flammable vapors in the tank during all operating conditions. The special conditions include requirements that will address specific risk elements for warm day ground and climb profiles where accidents have occurred which is a more stringent requirement than § 25.981(c). The FRM will augment the ignition source prevention measures in substantially reducing the risk for future fuel tank explosions. No changes were made as a result of these comments.

Definition of Inert

Comment: One commenter believes that 12 percent oxygen concentration at sea level cannot be assured unless the oxygen percentage within the ullage of the fuel tank is monitored and measured. The commenter says oxygen monitoring by percentage is needed to verify if the center wing fuel tank is inert per the definition supplied in the special conditions, and to determine if the inerting system is inoperative. The commenter says there is a need to know the oxygen concentration in the center tank for airplanes operated in warmer climates. If NEA is lost, the risk factor needs to be accounted for in the analysis. If it is lost because of a leak surrounding the NGS, there will be a higher than normal oxygen level in that compartment. The commenter would encourage further investigation, testing, and analysis of existing data to support the definition of inert in all locations and all fuel tanks for the Model 747 series airplanes and eventually on the Model 737, 757, 767, and 777 airplanes, as referenced in the ''Novel or Unusual Design Features'' discussion.

Two commenters believe that the level of oxygen concentration should be monitored at the most critical location in the fuel tank to verify adequate system operation. One of the commenters believes that an indication should be generated if the oxygen concentration in the fuel tank rises above the maximum allowable concentration for greater than a specified time. This would prevent transient conditions from generating nuisance indications. The other commenter says that the system indications should monitor adequate system performance throughout the flight profile, which is something a periodic ground check cannot ensure. Besides the obvious safety and reliability benefits, it is not understood how else the reporting requirements of special condition III(c) could be met. Although AC 25.981–2 does not require cockpit indications for an inerting system, this commenter would support rulemaking intended to revise AC 25.981–2.

Two commenters believe that an indication system that displays the inerting system functionality should be available to the flightcrew. Relying solely on preflight or ground crew checks leaves out a valuable resource for

monitoring the system status. The flightcrew should be aware if the system is functioning. If it is not, changes in the flight profile should be made to ensure the airplane is out of the regime where the center fuel tank is in the most danger.

FAA Reply: We do not concur with the commenters. There are no requirements in the special conditions for oxygen concentration monitoring, but there is nothing that precludes a monitoring system and associated crew indications from being developed. While monitoring of oxygen concentrations is one means of determining system performance, other indications such as pressure measurements, flow measurements, valve positions etc., as well as periodic functional checks may be used to provide assurance that the system is functional. The concerns listed by the commenters are included in the analysis and testing the applicant must perform to show that the FRM meets the special condition flammability and reliability requirements. No changes were made as a result of these comments.

Comment: The commenter requests the word ''localized'' in the second sentence of the first paragraph in this section be deleted. The commenter also requests that the rest of the paragraph after the second sentence (*i.e.*, ''Currently there is * * * be considered inert'') be deleted. The commenter believes the addition of a requirement to individually address all tank compartments is not in accordance with the principles used to date to develop a practical and commercially viable system that will minimize the average fleet flammability exposure. It is already conservative to estimate flammability based on average fuel temperature because the average fuel temperature is typically higher than the majority of the tank surfaces. This approach represents the theoretical flammability of a tank where all the tank surfaces are at this uniform temperature. In reality, when the fuel temperature is high enough to result in evolution of sufficient vapors to cause a flammable ullage near the fuel surface, the temperatures of the sides and top of the fuel tank are cooler, resulting in condensation that significantly reduces the actual flammability of the tank ullage.

FAA Reply: We concur, in part, with the commenter. We have revised the definition of ''flammable'' in the special conditions to read, ''With respect to a fluid or gas, flammable means susceptible to igniting readily or to exploding (14 CFR part 1, Definitions). A non-flammable ullage is one where the gas mixture is too lean or too rich to burn and/or is inert per the definition below.''

We do not concur with the comment that the bulk average fuel temperature should be used to determine flammability. The ARAC used a bulk average fuel temperature to provide a comparative flammability level for various fuel tanks on different airplane models. The ARAC used a simplified methodology that assumed the fuel tank was one large volume and that the liquid fuel and fuel vapor in the tank would mix, forming a uniform mixture. In this case, using the bulk average fuel temperature would provide a realistic representation of the actual fuel tank flammability.

This simplified approach, however, does not reflect the actual design of some fuel tanks. In reality, some fuel tanks have significantly different flammability exposures within different compartments of the fuel tank due to barriers installed in the tank, to prevent sloshing of fuel. These barriers do not allow significant mixing of the fuel and vapors. For example, some center fuel tanks extend from the center wing box out into the wing. Other tanks located in the center wing box have barriers that create separate compartments within the tank. In these cases, the portion of the fuel tank in the wing or that exposed to a cold air source may be much cooler and little mixing within the different portions of the fuel tank would occur. If the fuel temperature in the part of the tank located in the wing or other colder section were used in the analysis, the results would not represent the actual flammability of those portions of the tank where cooling did not occur. We have therefore modified the special conditions to revise the discussion in appendix 2 to address those airplanes that have significantly different flammability exposures within different compartments of the fuel tank due to the design of the tank, such as a center fuel tank that extends from the center wing box out into the wing. For these fuel tanks, the appendix requires evaluation of the compartment with the highest flammability for each flight phase. We do not expect that determining which compartment to evaluate will require a detailed analysis of each compartment. In most cases, a qualitative assessment, considering ambient temperatures and other relevant factors will be sufficient.

Determining Flammability

Comment: This commenter says the Monte Carlo analysis should also consider the center tank theoretically in an unheated condition, not heated by adjacent equipment.

FAA Reply: We do not concur. The Monte Carlo analysis as used in these special conditions is specific for determining fuel tank flammability exposure and certifying an FRM that reduces the flammability of a specific center wing tank. No changes were made as a result of this comment.

Comment: This commenter points out that in the second paragraph of the ''Flammability'' discussion the FAA says ''to quantify the fleet exposure, the Monte Carlo analysis approach is applied to a statistically significant number (1,000,000) of flights where each of the factors described above is randomly selected.'' Table 6 in appendix 2 of the special conditions defines lower flammability limits if the applicant chooses to use fewer than 1,000,000 flights. The commenter says the number of runs should be defined as ''when the average results become stable,'' and the criteria for assessing these results should then be 3 percent.

FAA Reply: We do not concur. Monte Carlo analyses in general require the applicant to run a large number of cases for the results to be accurate. The special conditions contain a method for an applicant to run fewer cases if they are able to show that they meet the required 3 percent fleet average and 3 percent warm day flammability exposure limits for the fuel tank under evaluation. No changes were made as a result of this comment.

Comment: The commenter requests that the following sentence be added to the end of the last paragraph of the ''Flammability'' discussion: ''However, fresh air drawn into an otherwise inert tank during descent does not immediately saturate with fuel vapors, and hence localized concentrations above the inert level during descent do not represent a hazardous condition.'' This is because fresh air drawn into the fuel tank through the vent during descent is not flammable, and will not cause the tank to become flammable during descent. Fresh air near the vent has not had the time necessary to mix with the bulk tank ullage, and thus will not be inert. However, the same lack of mixing time also precludes the presence of a flammable vapor level in this same region. Counting these non-hazardous periods as ''flammable'' would increase system size, weight, and associated costs with no benefit.

FAA Reply: We concur and have modified the preamble discussion of ''Determining Flammability'' to add the following sentence: ''However, fresh air drawn into an otherwise inert tank during descent does not immediately saturate with fuel vapors; hence, localized concentrations above the inert

level during descent do not represent a hazardous condition.''

Definition of Transport Effects

Comment: One commenter says the FAA statement that the effects of mass loading and the effects of fuel vaporization and condensation with time and temperature changes have been excluded is flawed, because FAA documents clearly indicate that ''transport effects'' are important. Another commenter also believes that the analysis model should include ''transport effects'' as well as flammability effects on heated unusable (empty, 0 quantity indication) fuel in the center wing tank. This second commenter says the fuel temperature within a specific compartment of the tank could be within the flammable range for the fuel type being used if the tank was empty and heat sources were next to the compartment.

FAA Reply: We do not concur with the commenters. As stated in the definition of ''transport effects'' in the special conditions and the earlier discussion, this term includes two physical phenomena that affect the concentration of fuel vapor in the fuel tank ullage. The first is referred to as low fuel conditions or ''mass loading.'' At low fuel quantities there may be insufficient fuel in the fuel tank at a given pressure and temperature for the concentration of fuel vapor to reach the equilibrium level that would form if fuel were added to the tank.

The second is the change in fuel vapor concentration in the fuel tank ullage caused by fuel condensation and vaporization. This change in fuel vapor concentration is caused by temperature variations on the fuel tank surfaces that result in a vapor concentration different from the concentration calculated using the bulk average fuel temperature.

We excluded both of these effects because they were not considered in the original methodology ARAC used to establish the proposed flammability requirements. If this effect had been included in the wing tank flammability exposure calculation, it would have resulted in a significantly lower wing tank flammability exposure benchmark value.

The ARAC analysis also did not consider the effects of the low fuel condition (or ''mass loading''), which would lower the calculated flammability exposure value for fuel tanks that are routinely emptied, such as center wing tanks. As explained earlier, when the amount of fuel is reduced to very low quantities within a fuel tank, there may be insufficient fuel in the tank to allow vaporization of fuel to the concentration that would be predicted for any particular temperature and pressure.

No changes were made as a result of these comments.

Flammability Limit

Comment: The commenter requests that the reference to ''during descent'' be changed to ''after high rate descent'' to more accurately reflect conditions.

FAA Reply: We do not concur. The commenter provided no substantiation to clarify why they believe the tank would be able to maintain an inert ullage during descent mode that is not classified as a high rate of descent. Both the performance of the FRM and the rate of descent may impact the oxygen concentration level in the fuel tank and both need to be considered. No changes were made as the result of this comment.

Comment: The commenter says that the 3 percent exposure criteria, referenced in this discussion, appears to be premised on the good service history of main and non-heated reserve fuel tanks. However, heated center wing tanks (CWTs) make up only a small percentage of the total number of tanks in use. If the exposure times for non-heated tanks are summed, it is likely to be close to the total overall exposure period for heated CWTs. If exposure period were the only criterion, then one would expect to see non-heated tank incidents. It is probable that the operating requirements (fuel remaining in tanks) have as much to do with the good service history as the exposure level. SFAR 88 Ignition Reduction Modifications will significantly reduce the ignition risk of the heated CWT to a level where perhaps they are not quite as safe as the main tanks but on a false premise. If the non-heated tanks had an average 6 percent exposure, it is unlikely that the service history would differ. Setting the exposure design criteria to 3 percent or lower may not be as relevant as indicated in these special conditions, and even a small shift upward could significantly influence the cost of installation and maintenance. A more important criterion could be the fact that many CWT components remain uncovered for the majority of time, with the possibility of an intermittent latent ignition type defect coming into play when inerting is unavailable. Therefore, the commenter states it may be more appropriate to consider additional MMEL limitations to help mitigate whatever is the remaining exposure risk. This may include ensuring that if CWT components fail, power is removed and not reapplied until the component is replaced and/or some fuel is left in the CWT under certain defect conditions. It should also be noted that it is important to ensure that inerting does not become a substitute over time for the quick and effective clearance of CWT defects.

FAA Reply: We agree with the commenter concerning the limitations of ignition source prevention. Minimization of ignition sources, such as component failure, removal of power, etc., was the goal of SFAR 88 but it is recognized that absolute elimination of ignition sources is not possible. Flammability reduction provides a significant improvement in fuel tank safety in conjunction with ignition source prevention but, as such, it is important to recognize that this system will not necessarily eliminate all flammable vapors at all operating conditions. However, the warm day flammability exposure requirements in these special conditions would prevent fuel tank flammability during conditions where the past three fuel tank explosions occurred. By combining the two approaches, the risks for fuel tank explosions can be substantially reduced. Compliance with the special conditions will also ensure that neither the performance nor the reliability of the FRM will be greater than 1.8 percent of the fleet average flammability exposure, thereby further minimizing the exposure risk. The MMEL for each airplane model was reviewed as part of SFAR 88 and limitations on operations. We do not believe that additional MMEL requirements would be needed unless the FRM is unable to meet the performance, reliability, or warm day requirements in the special conditions. No changes were made as a result of these comments.

Specific Risk Flammability Limit

Comment: The commenter says that because the issue of fuel tank flammability is primarily one of specific risk, they do not understand why the Monte Carlo analysis does not include MMEL relief and dispatch with the FRM inoperative in the evaluation of specific risk against the requirement of special condition paragraph II (b).

FAA Reply: We did not include the effect of MMEL in special condition paragraph II (b) because the intent is to address the performance of the FRM under warm day conditions on the ground, in takeoff, and in climb, which are high risk. The fleet average flammability exposure includes the affects of reliability and including this in the warm day (that is, specific risk) is redundant. No changes were made as a result of this comment.

Comment: The commenter requests that reference to ''conducting a separate

Monte Carlo'' be changed to ''analyzing a subset of the fleet average Monte Carlo'' to more accurately reflect how the analysis has been developed.

FAA Reply: We do not agree. The applicant can analyze either a subset of an overall analysis or conduct a separate Monte Carlo for the warm day ground, takeoff, and climb cases. The applicant is still required to run the analysis to meet the fuel tank flammability exposure limit for the number of simulated flights as shown in Table 6 of appendix 2. No changes were made to the special conditions because the method has not been limited.

Inerting System Indications

Comment: The commenter says the four elements (when the FRM is operating and inerts the tank, when the FRM is operating but does not inert the tank, when the FRM is not operating properly and the operator is unaware of the failure, and when the FRM is not operating and is on the MMEL) mentioned in the first paragraph of this discussion should be included for fleet average flammability exposure. Paragraph II (e) of the special condition states that ''sufficient accessibility for maintenance personnel, or the flightcrew, must be provided to FRM status indications that are necessary to meet the reliability requirements of paragraph II (a) of these special conditions.'' The way this special condition is written is unclear and leaves it to the applicant's opinion of what the ''status indication'' should be. The commenter would therefore like to see this special condition explicitly address the four elements mentioned above.

FAA Reply: We do not concur. The special conditions require the overall FRM reliability to meet a minimum standard and allow the applicant to optimize the design. The type of indications that would be required to meet the reliability requirements is design dependent; therefore, the special conditions do not require specific indications. No changes were made as a result of this comment.

Comment: This commenter believes it would be cost beneficial and easier for operators if the look and feel of the FRM indication system is the same across all fleets. Operators already deal with different indication design philosophy across different fleets, so the argument of consistency is not appropriate. Where possible and depending on cost, a strong consideration should be made to align the FRM indication with existing indication philosophy. In the case of the 747–400, this should be by way of an Engine Indication and Crew Alert System (EICAS) status message.

FAA Reply: We do not concur. As stated earlier, the special conditions do not dictate a specific design but rather state that indication and/or maintenance checks will be required to ensure that the performance and reliability of the FRM meets the special condition requirements. The look and feel of an indication system is beyond the scope of these special conditions. No changes were made as a result of these comments.

Comment: The commenter believes that an FRM requires a redundant system to address any future foreseeable events and/or conditions. Consideration should be given to apply the FRM on newly certificated airplanes, and only where it is feasible to existing airplanes.

FAA Reply: We do not concur. As stated earlier, the FRM is intended to be a system that provides an additional layer of protection by reducing the exposure to flammable vapors in the heated center wing fuel tank. This protection, when added to ignition prevention measures, will substantially reduce the likelihood of future fuel tank explosions in the fleet. These special conditions are only applicable to certification of an FRM for the affected 747 series airplanes for which an application was received. No changes were made as a result of these comments.

Comment: The special conditions state that, ''at a minimum, proper function of essential features of the system should be validated once per day by maintenance review of indications or functional checks, possibly prior to the first flight of the day.'' This is a specific implementation and is taken to be for 747 series airplanes only. If the special condition material is intended to be used for other projects, the sentence should be ''proper function of essential features of the system should be monitored.''

FAA Reply: The special conditions require that the FRM for the applicable 747 airplanes meet specific performance and reliability requirements. Various design methods to ensure this may include a combination of system integrity monitoring and indication, redundancy of components, and maintenance actions. The initial 747 FRM design features, as presented to the FAA, would require daily monitoring of system performance to meet the reliability requirements. Daily checks may not be needed on all FRM and are only one way of monitoring proper function of essential system features. Continuous system monitoring by maintenance computers with associated maintenance messages may also be used. A combination of maintenance indication or maintenance check procedures could be used to limit exposure to latent failures within the system, or high inherent reliability may be used to make sure the system will meet the fuel tank flammability exposure requirements.

The type of FRM indications and the frequency of checking system performance (maintenance intervals) must be determined as part of the FRM fuel tank flammability exposure analysis. These special conditions will be used as the starting point for developing special conditions for other airplane models, listed in the preamble, for which the applicant is considering certification of an FRM. No changes were made to these special conditions as a result of these comments because they are applicable to the 747.

Comment: Two commenters question the same discussion in the preamble, specifically the sentence that reads, ''if system maintenance indication is not provided for features of the system essential for proper system operation, system functional checks will be required for these features. They believe that, at a minimum, proper function of essential features of the system should be validated once per day by maintenance review of indications or functional checks, possibly prior to the first flight of the day.'' The comments indicate the commenter interpreted the statement to mean that daily checks are required. One commenter says that accomplishing the functional checks prior to the first flight of the day is not practical, because maintenance personnel are not available at all destinations. It could be 2 to 3 days before the affected airplanes would be at an appropriate location where maintenance is available. The validation check would better align with the operators' maintenance programs if the interval were based on flight hours. The applicant and airplane operators have discussed this topic at length, and believe that an interval of 75 flight hours would provide a conservative validation of the system's functionality and allow the check to be accomplished by qualified maintenance personnel. The commenters also say there is no historical data to support FRM validation only once per day. They recommend continuous monitoring.

FAA Reply: As discussed earlier, we concur with the commenters that the need for daily checks will depend on the FRM design. The preamble discussion was not intended to mandate daily checks by maintenance personnel. As noted earlier, the need for system

functional checks and the interval between the checks will be established based on the level of ''system maintenance indication provided for features of the system essential for proper system operation'' and the reliability of the system. If continual system monitoring is provided or features of the system have high inherent reliability, daily checks would not be needed to meet the reliability requirements in these special conditions. As we stated in the preamble, the determination of a proper interval and procedure will follow completion of the certification testing and demonstration of the system's reliability and performance prior to certification. The time interval between system health checks and maintenance will be established by the reliability analysis, any airworthiness limitations, and the FOEB. We agree with the commenter that providing a design with continuous system monitoring is desirable; however, we do not agree that this feature should be required by the special conditions because it would mandate specific design features and not allow design freedom. No change was made as a result of these comments.

Comment: Concerning accomplishment of a daily check for proper function of the FRM, the commenter says past experience has shown that extended ground time and maintenance induced errors can happen. The commenter also contends this is contradictory to the statement that, ''determination of a proper interval and procedure will follow completion of the certification testing * * *.'' The commenter recommends that the maintenance review board (MRB) procedure, outlined in AC 121–22, be used to develop the Instructions for Continued Airworthiness.

FAA Reply: Instructions for Continued Airworthiness are established as part of certification of the FRM to the performance and reliability requirements in these special conditions. The MRB procedure, as outlined in AC 121–22, will be used to define how an MRB will be conducted. No changes were made as a result of these comments.

Comment: Concerning the MMEL dispatch inoperative interval, four commenters believe the proposed MMEL interval of 10 days should be shortened and the FRM be operational to the maximum extent practical. One commenter says 10 days represents approximately 2.74 percent of a year, and contends that the FRM components (bleed-air control valve, ozone converter, heat exchanger, filter, and ASM) can be readily removed and replaced by a line mechanic during a typical turnaround. The commenter believes that several of the FRM components can cause system malfunction (produce low quality NEA) without any indication. These malfunctions cannot be predicted by analysis or by test. A second commenter notes that the FAA and industry have adopted a 3-day MMEL relief interval for other inoperative safety systems, such as flight data recorders, while another commenter states that catastrophic events brought about the development of an FRM; therefore, the importance of such a system is easily seen.

FAA Reply: We do not concur with the commenters regarding setting a specific MMEL interval in the special conditions. The FOEB process, as previously discussed, will determine the appropriate MMEL dispatch interval. No changes were made as a result of these comments.

Comment: One commenter believes that if the reliability analysis shows that a 10-day MMEL will allow the overall fleet flammability exposure limit to meet the requirements listed in the special conditions, then the 10-day MMEL should be acceptable. A second commenter requests clarification that the MMEL relief will be determined using standard methods, and that the reference to warm climates in the last paragraph of this section refers to inclusion in the Monte Carlo analysis and not to a limitation in the MMEL specific to warm ambient temperatures.

FAA Reply: The standard processes (FOEB review), as discussed above, will be used to determine the appropriate MMEL dispatch interval. These same processes may also determine if a limitation is needed in the MMEL for warm day operation based on the results of the analysis. No changes were made as a result of these comments.

Comment: The commenter says that if the FRM is inoperative, there might be some conditions in which the percentage of oxygen concentration is as high as 30 percent while the airplane is in the climb flight profile. An operational consideration might be to transfer fuel into the center tank or to carry extra fuel in that tank until level cruise is attained. This procedure addresses the internal energy sources discussed in current advisory circulars. The commenter contends that whether or not the FRM is in low or high flow mode, it cannot keep up with the need due to pressure and temperature changes and out-gassing of the fuel.

FAA Reply: We do not concur. The special conditions require that the flammability analysis take into account any periods where the FRM is inoperative or does not have the capacity to maintain a non-flammable fuel tank ullage. We agree with the commenter that out-gassing of dissolved air in the fuel may affect the oxygen concentration in the fuel tank during certain flights. These special conditions require that this factor be considered when determining the portion of the flammability exposure evaluation time (FEET) when the FRM cannot maintain a non-flammable ullage. This portion of the fleet average flammability exposure is limited to 1.8 percent. The special condition requirements are intended to provide an additional layer of protection to the existing certification standards that require designs to preclude fuel tank ignition sources. This balanced risk management approach of precluding ignition sources and reducing flammability exposure in certain fuel tanks provides two independent layers for preventing fuel tank explosions in those tanks. No changes were made as a result of these comments.

Comment: The commenter requests that the entire discussion of ''Inerting System Indications'' be reworded. It is the commenter's position that the special conditions should establish the certification requirements not already established by existing part 25 requirements. The commenter says that the reliability requirement for the FRM is clearly established in paragraph II (a)(2) of the special conditions as to not contribute more than 1.8% overall fleet flammability exposure. The commenter believes the required inspections and associated inspection intervals should be developed by the applicant in support of complying with the 1.8% limit. The applicant should have the flexibility to design a system that has high reliability (at higher equipment cost) with fewer inspections required, or lower reliability and higher frequency of inspection with less time allowed for MMEL dispatch. The commenter also believes that this is consistent with § 25.981(c), amendment 25–102, where it specifically states that ''minimize'' means to incorporate practicable design methods to reduce the likelihood of flammable vapors.

FAA Reply: We do not concur. The special conditions do provide the applicant with flexibility to design the FRM either to higher reliability and longer inspection intervals or lower reliability with more frequent inspections, as long as the contributions for either performance of the system or its reliability are not greater than 1.8 percent of the total 3 percent fleet average flammability exposure. The approved maintenance procedures and

intervals established by the FOEB will be based on the applicant's fleet average flammability exposure data submitted to the FAA. No changes were made as a result of these comments.

Affect of FRM on Auxiliary Fuel Tank System Supplemental Type Certificates

Comment: The commenter believes the applicant should validate, as part of the certification effort, that the performance and reliability requirements for the FRM are met for any approved combination of auxiliary fuel tank installations. The commenter does not understand how installation of an FRM on an airplane with auxiliary fuel tanks can be adequately assessed ''during development and approval of the service bulletin for the FRM.''

FAA Reply: We concur and have added a requirement in special condition II (a)(3) for the applicant to ''identify critical features of the fuel tank system to prevent an auxiliary fuel tank installation from increasing the flammability exposure of the center wing tank above that permitted under paragraph II (a)(1) and (2) and to prevent degradation of the performance and reliability of the FRM.'' We have also added a requirement under paragraph III (a)(3) to establish airworthiness limitations to address these features.

Disposal of Oxygen-Enriched Air

Comment: One commenter refers to the statement, ''the OEA produced in the proposed design is diluted with air from a heat exchanger, which is intended to reduce the OEA concentration to non-hazardous levels.'' The commenter says that although this is a particular solution to the hazard, it should not be seen as the only solution. The term ''hazardous'' is open to interpretation; thus, this discussion is considered as too design specific.

FAA Reply: We agree with the commenter that there are a number of different means of addressing any hazards associated with the OEA. These special conditions are applicable to the applicant's proposal for certification of their FRM design. The description of the particular design feature noted by the commenter was not intended to limit other means of compliance should another applicant propose an FRM. We will evaluate each FRM based on the proposed design. No changes were made as a result of these comments.

Comment: The commenter requests that the first paragraph of this discussion be replaced with the following: ''The FRM produces both nitrogen-enriched air (NEA) and oxygen-enriched air (OEA). The OEA generated by the FRM could result in a fire hazard if not disposed of properly. Compliance with existing requirements of § 25.863 are sufficient to address potential leakage of OEA due to failures and safe disposal of the OEA during normal operation.'' The commenter requests this change to make OEA leakage compliance requirements consistent with those applicable for other flammable leakage zone items.

FAA Reply: We concur with the commenter that certification of the FRM will require the applicant to evaluate installation of equipment in a flammable fluid leakage zone for compliance with § 25.863. However, compliance with § 25.901 is required to ensure that no single failure or malfunction, or probable combination of failures, will jeopardize the safe operation of the airplane. Depending on where the OEA is discharged, other part 25 regulations might apply. No changes were made as a result of these comments.

Applicability

Comment: The commenter notes that the airplane applicability is not consistent. Furthermore, the commenter says § 25.981(c), amendment 25–102, is only applicable to new type designs, and therefore these special conditions should apply to new type designs and may extend to newly built airplanes. If the special conditions were proposed for other Boeing Model airplanes (737, 777, etc.), the commenter believes the standards established for the 747 airplanes should also be applicable for these models.

FAA Reply: We concur with the commenter that the airplane applicability was inconsistent in certain sections of the proposed special conditions in that these sections excluded the 747–100B and 747–300 series airplanes. We have corrected the applicable sections of the final special conditions to show the applicability as Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes. The applicant has voluntarily proposed to show compliance with amendment 25–102 plus the additional requirements of the special conditions for an inerting system for the affected Boeing Model 747 series airplanes. As stated earlier, these special conditions will be the baseline for the other airplane models for which the applicant plans to seek approval of an FRM. No changes were made as a result of this comment.

Special Conditions

I. Definitions

Comment: The commenter requests the definition for flammable be revised to read as follows:

Flammable. With respect to a fluid or gas, flammable means susceptible to igniting readily or to exploding (14 CFR Part 1, Definitions). A non-flammable ullage is one where the gas mixture is too lean or too rich to burn and/or is inert per the definition of inert below. For the purposes of these special conditions, a fuel tank is considered flammable when the ullage is not inert and the fuel vapor concentration is within the flammable range for the fuel type being used. The fuel vapor concentration of the ullage in a fuel tank shall be determined based on the average fuel temperature within the tank. This vapor concentration shall be assumed to exist throughout all bays of the tank. An exception to this shall be utilized when one or more major portion of the tank is exposed to grossly dissimilar heating conditions. In this situation, the vapor concentration of this major portion shall be determined independently based upon the fuel temperature of this portion.

The commenter requests this change because the wording, as proposed in the notice, is inconsistent with the modeling methods required in appendix 2 of the special conditions. The development of the concept of assessing average fleet flammability exposure using a Monte Carlo analysis was based on the use of an average bulk fuel temperature of the entire center wing fuel tank. This is the parameter that was defined in conjunction with the conclusion that achieving a 3 percent average fleet flammability exposure criteria would be considered equivalent to providing similar characteristics to the type certificated model's unheated aluminum wing tanks when the same fuel is used in the calculation, as required by § 25.981(c). None of the Monte Carlo analytical modeling to date by the FAA, the two ARAC studies, or the Boeing Company have been based on individual tank compartment fuel temperatures. Each of these analyses has been based on the average temperature of the fuel and applying the flammability exposure based on that fuel temperature to all bays. The commenter references FAA Report DOT/FAA/AR–TN99/65 for supporting test data.

FAA Reply: We concur, in part, with the commenter. As stated earlier, we have modified the definition of flammable to ''With respect to a fluid or gas, flammable means susceptible to igniting readily or to exploding (14 CFR part 1, Definitions). A non-flammable ullage is one where the gas mixture is

too lean or too rich to burn and/or is inert per the definition of inert below.''

To ensure that flammability of individual bays is accounted for in the Monte Carlo analysis, we have added clarification in appendix 2 that reads:

For the purposes of these special conditions, a fuel tank is considered flammable when the ullage is not inert and the fuel vapor concentration is within the flammable range for the fuel type being used. The fuel vapor concentration of the ullage in a fuel tank shall be determined based on the bulk average fuel temperature within the tank. This vapor concentration must be assumed to exist throughout all bays of the tank. For those airplanes with fuel tanks having different flammability exposure within different compartments of the tank, the flammability of the compartments must be analyzed individually in the Monte Carlo analysis. The highest flammability exposure must be used in the analysis. For example, the center wing fuel tank in some designs extends into the wing and has portions of the tank that are cooled by outside air, and other portions of the tank that are insulated from outside air. Therefore, the fuel temperature is different than the portion of the fuel tank in the wing.

Comment: One commenter says use of the term ''employee'' in the definition for ''hazardous atmosphere'' is questionable. The commenter considers it more appropriate to extend the definition to cover the risk to maintenance personnel, passengers, flightcrew, etc.

FAA Reply: We concur with the commenter and have revised the definition of ''hazardous atmosphere'' to address any person(s).

Comment: A commenter requests clarification of the definition of inert (what is the percentage at sea level to meet the 12 percent or less oxygen limit at 10,000 feet?). The commenter also asks if the NEA supply can keep up with demand through 10,000 feet. The commenter says the altitude should be 15,000 feet because TWA 800 exploded at 13,500 feet. The commenter also says there is conjecture that the oxygen concentration in the fuel tank ullage will have to be less than 10 percent at sea level to keep the oxygen level below 12 percent at 10,000 feet.

FAA Reply: We do not concur. The definition of inert is based on FAA testing as explained previously. No changes were made as a result of these comments.

Comment: In reference to the definition of a Monte Carlo analysis, the commenter notes that the FAA used the ARAC analysis in the model as the means of compliance with the special conditions. The commenter says this analysis did not include transport effects, which they believe should be included, as well as flammability effects on center wing tank heated unusable (empty, 0 quantity indication) fuel. They say the fuel temperature within a specific compartment of the tank could be within the flammable range for the fuel type being used if the tank was empty and heat sources were next to the compartment.

FAA Reply: We do not concur. As explained earlier, we excluded both of the phenomena (mass loading and fuel vaporization and condensation) that are part of the definition of transport effects, because they were not considered by ARAC when they established the flammability requirements. If they had included these effects in the wing tank flammability exposure calculation, the wing tank flammability exposure benchmark value would have been significantly lower, which could result in more restrictive requirements for center wing tank flammability exposure. No changes were made as a result of these comments.

Comment: Two commenters request clarification of the definition of operational time. One commenter proposes the definition be revised to read as follows for consistency with AC 25.981–2 and the Monte Carlo analysis: This commenter says the current definition would not result in a clearly defined number of flights per day for use in the Monte Carlo analysis and would basically define the daily operational time as one continuous period of time.

''*Operational Time.* For the purpose of these special conditions, the time from the start of preparing the airplane for flight (that is, starting and connecting the auxiliary or ground power unit to the aircraft electrical system) through the actual flight and landing, and through the time to disembark any payload, passengers and crew.''

FAA Reply: We concur in part. Because the definition of operational time in these special conditions is not consistent with the definition in 14 CFR part 1, Definitions, we have replaced ''operational time'' with the term ''flammability exposure evaluation time (FEET).'' We have revised the definition to read as follows:

Flammability Exposure Evaluation Time (FEET). For the purpose of these special conditions, the time from the start of preparing the airplane for flight, through the flight and landing, until all payload is unloaded and all passengers and crew have disembarked. In the Monte Carlo program, the flight time is randomly selected from the Mission Range Distribution (Table 3), the pre-flight times are provided as a function of the flight time, and the post-flight time is a constant 30 minutes.

Comment: This commenter believes additional definitions need to be added such as operational time, fleet average, etc., for clarification.

FAA Reply: We concur in part. The definition of operational time is already addressed in Special Condition I. Definitions, and we have added additional definitions for clarification as needed.

II. System Performance and Reliability

Comment: Several commenters request clarification of paragraph II (a)(2). One commenter assumes that the FRM can be non-operational for 1.8 percent of the airplane operational life. This commenter says elsewhere in the special conditions more stringent requirements are implied (for example ''shortest practical MMEL relief''), which is inconsistent. The commenter considers the 1.8 percent requirement to be sufficient. Another commenter requests explanation of the percentage figures quoted in paragraphs II (a), (b), and (c).

FAA Reply: The 1.8 percent maximum contribution requirement for an inoperative FRM is for an airplane fleet, not an individual airplane. The special conditions limit the maximum fleet average flammability exposure to 3 percent. The performance or reliability contributions can be up to 1.8 percent, as long as the overall fleet average flammability exposure does not exceed a total of 3 percent. The contribution for FRM performance would be limited to 1.2 percent if the reliability contribution were 1.8 percent. The 3 percent warm day requirement is a separate performance requirement that must be met for warm day ground, takeoff, and climb flight profiles and therefore does not include the contribution for reliability of the system. All of these requirements establish the minimum safety standards. No changes were made as a result of these comments.

Comment: The commenter refers to the statement in paragraph II (c) that ''the applicant must provide data from ground testing and flight testing'' to show compliance with paragraphs II (a), (b), and (c)(2). The commenter believes that the means of compliance should be left to the applicant. The paragraph should therefore read, ''The applicant must provide appropriate data * * *''

Comment: Another commenter also requests a change to paragraph II(c). This commenter suggests the following: ''The applicant must provide data from analysis and/or testing.'' The commenter says use of analysis and/or testing is consistent with normal processes used to demonstrate compliance with part 25 requirements.

FAA Reply: We do not concur with the commenters. The wording of the special condition is consistent with other regulations where test data is needed to demonstrate compliance. Analysis alone is not considered adequate for demonstrating compliance with the special condition requirements because with this new technology there is not a sufficient experience base from which to derive a reliable analysis. No changes were made as a result of these comments.

Comment: One commenter requests clarification why paragraph II (c) has been included in the requirements listed under paragraphs II (c)(1), II (d), and III (a).

FAA Reply: We infer from the comment that the reference to paragraph II (c) should be removed from paragraphs II (c)(1), II (d), and III (a) and we concur. We have therefore revised the special conditions to change the reference in the noted paragraphs to paragraph II (c)(2).

Comment: The commenter requests that the four elements involved with the fleet average flammability exposure, as referenced in ''Inerting System Indications,'' be included in paragraph II (e).

FAA Reply: We do not concur. The special conditions do not dictate a specific design, but rather state that indication and/or maintenance checks will be required to ensure that the performance and reliability of the FRM meets the special conditions requirements. No changes were made as a result of this comment.

Comment: The commenter recommends that paragraph II (f) be expanded to state that appropriate markings are required for all inerted fuel tanks, tanks adjacent to inerted fuel tanks, and all fuel tanks communicating with the inerted tanks via plumbing. The plumbing includes, but is not limited to, vent system, fuel feed system, refuel system, transfer system and cross-feed system plumbing. NEA could enter adjacent fuel tanks via structural leaks. It could also enter other fuel tanks through plumbing, if valves are operated or fail in the open position. The hazardous markings should also be stenciled on the external upper and lower surfaces of the inerted tank to ensure maintenance personnel are aware of the possible contents of the fuel tank.

FAA Reply: We concur in part. We revised paragraph II (f) to clarify that any fuel tank with an FRM must be marked as required, as well as any confined spaces or enclosed areas that could contain NEA under normal conditions or failure conditions. The special condition already requires the applicant to mark access doors and panels to any fuel tank that communicates with an inerted tank.

Comment: Two commenters say that in paragraph II (g) it is not clear which ''normal'' operating conditions the FAA is referring to, and if this requirement is intended to address any FRM failures, or only hazards related to the oxygen-enriched air. Both consider the criteria specified in this paragraph to be inadequate. One commenter says the FRM installation must be shown to comply with the safety requirements of § 25.1309 (demonstrate that an inverse relationship exists between the probability of an event, failure condition, and its severity). The second commenter requests that paragraph II (g) be revised to read: ''Oxygen-enriched air produced by the nitrogen generation system must not create a hazard during all FRS operating conditions and it must be established that no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the airplane.''

Comment: Another commenter requests paragraph II (g) be revised to read: ''Oxygen-enriched air produced by the nitrogen generation system must not create a hazard during normal operating conditions (refer to 14 CFR 25.863).'' The commenter requests this change to make OEA leakage compliance requirements consistent with those applicable for other flammable leakage zone items.

FAA Reply: We concur, in part, with the commenters. The intent of this requirement is to address any hazards associated with both normal operating and failure conditions and not just when the FRM is operating. This intent was not clear in the original proposal. We have revised paragraph II (g) to state that, ''Any FRM failures, or failures that could affect the FRM, with potential catastrophic consequences must not result from a single failure or a combination of failures not shown to be extremely improbable.'' Note that approval of the FRM design will require the applicant to evaluate installation of equipment in a flammable fluid leakage zone for compliance with § 25.863. However, compliance with the existing general requirements of § 25.901 is required to ensure that no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the airplane.

III. Maintenance

Comment: The commenter requests paragraph III (a) be changed to: ''Maintenance and/or inspection tasks needed to identify items without failure indication, so that FRM reliability does not fall below the values assumed in the Monte-Carlo analysis, must be identified as Airworthiness Limitations.'' The requirement to identify Airworthiness Limitations for all maintenance and/or inspection tasks is unprecedented in part 25 certification and would impose an unjustified burden on operators. The application of this special condition wording to other parts of the fuel system would, in essence, require an Airworthiness Limitation to inspect the flight deck lights for basic indications such as pump low pressure lights and status messages. It is the commenter's position that identifying Airworthiness Limitations only for items without failure indication will ensure that the desired inspections to identify latent failures are accomplished, without an impractical burden on the operators.

FAA Reply: We concur, in part, with the commenter. Paragraph III (a) is not intended to apply to all maintenance and/or inspection tasks, just those necessary to identify failures related to FRM performance and reliability requirements. No changes were made as a result of these comments.

Comment: The commenter requests that paragraph III(c)(1) be changed to: ''Develop and introduce an event monitoring and reporting system acceptable to the primary certification authority.'' The commenter requests this change because the proposed requirement to track inoperative time would result in the introduction of new recordkeeping processes, which, in turn, will result in a significant increase in the maintenance and operational burden on the operators. The commenter accepts that the FRM system reliability should be initially monitored, but the requirement should allow the flexibility for existing operator and reliability reporting systems to be used to evaluate actual in-service system reliability, at practical costs.

FAA Reply: We do not concur. We believe the applicant will be able to gather the required data from operators using existing reporting systems that are currently in use for airplane maintenance, reliability, and warranty claims. We anticipate the operators would provide this information to the applicant through existing business arrangements. No changes were made as a result of these comments.

Comment: One commenter believes initiation of component and/or system modification should also be included in paragraph III (c)(4) for correcting failures of the FRM that increase the fleet flammability exposure. Another commenter says paragraph III (c)(4) is not clear as to whether this statement

refers to the 3 percent flammability requirement of paragraph II (a) or II (b), or both. This commenter believes paragraph III (c)(4) should specifically address the requirements of both paragraphs II (a) and II (b) of the special conditions.

FAA Reply: We concur with the commenters that paragraph III (c)(4) needs clarification. We have revised this paragraph to read: ''Develop service instructions or revise the applicable airplane manual, per a schedule agreed to by the FAA, to correct any failures of the FRM that occur in service that could increase the fleet average or warm day flammability exposure of the tank to more than the exposure requirements of paragraphs II (a) and II (b) of these special conditions.''

Comment: The commenter requests that an additional requirement be added that would instruct an applicant to provide training material to the industry to incorporate any new design system. This would include any specific dangers and safety factors. The amendment of all technical documentation, including Airplane Maintenance Manual (AMM), Airplane Flight Manual (AFM), etc., is not enough.

FAA Reply: We do not concur with the commenter. The applicant must provide service bulletins that will instruct the operators how to properly install an FRM, which should include any specific dangers or safety factors that need to be considered during installation. The applicant is also responsible for providing any materials necessary to ensure an operator knows how to properly operate and maintain the system. Training is outside the scope of these special conditions. No changes were made as a result of this comment.

Appendix 1: Monte Carlo Analysis

Comment: The commenter requests the following note be added to paragraph (b)(3): ''**Note:** localized concentrations above the inert level are allowed provided the volume of the non-inert region would not produce a hazardous condition.'' The commenter says the fresh air drawn into the fuel tank through the vent during descent will not be flammable and will not cause the tank to become flammable during descent. The commenter believes that counting these non-hazardous periods as ''flammable'' would increase the system size, weight, and associated costs with no benefit.

FAA Reply: We agree that a note paragraph would be appropriate and have added the following to paragraph (b)(3): ''**Note:** localized concentrations above the inert level as a result of fresh air that is drawn into the fuel tank through vents during descent would not be considered as flammable.''

Comment: The commenter requests the following change to paragraph (b)(5): ''Proposed MMEL/MEL dispatch periods including action to be taken when dispatching with the FRM inoperative.'' The commenter says the MMEL process is outside the scope of the special conditions. The specific MMEL time should be based on fleet data for similar systems, not a prescriptive mandate of 60 hours. The actual inoperative MMEL interval and corresponding fleet exposure used in the Monte Carlo analysis is one of a number of items whose inoperative interval would be substantiated as part of achieving part 25 certification. During any part 25 certification project, providing acceptable substantiating data to the FAA for assumptions and analytical processes is the responsibility of the applicant.

FAA Reply: The establishment of an MMEL dispatch interval will be achieved through the certification process, whereby the Flight Operations Evaluation Board (FOEB) will review the applicable data submitted by the applicant to determine if the proposed dispatch interval is appropriate. However, the special conditions include the requirement in appendix 1, paragraph (b)(5), to allow the applicant to use an inoperative FRM interval that is shorter than the maximum proposed interval of ten days, if they can substantiate that the 3 percent flammability requirement can be met when operating with an inoperative FRM. Otherwise, 60 flight hours must be used in the analysis for a proposed 10-day MMEL dispatch interval. No changes were made as a result of these comments.

Comment: The commenter contends that in paragraph (b)(5) it should be noted that the assumed 60 flight hours for a 10-day MMEL is the ''average'' MMEL/MEL dispatch inoperative period.

FAA Reply: We recognize that not all MMEL inoperative periods will typically occupy the full allowed MMEL dispatch interval. To account for this, the special conditions require an average 60 flight hours to be used in the Monte Carlo analysis for a 10-day MMEL dispatch interval. This is based on using an average airplane utilization of 12 hours per day, and an average of one-half the proposed 10-day MMEL dispatch interval. No changes were made as a result of this comment.

Appendix 2: Atmosphere

Comment: The commenter says that oxygen monitoring would eliminate the need to compute the transitional temperature, as required in this section of appendix 2. This is because the oxygen monitoring system measures the temperature in the tanks and uses that temperature in the calculations to determine the oxygen percentage present.

FAA Reply: From the comment, we infer that the commenter is questioning why a temperature needs to be calculated for the Monte Carlo analysis when an oxygen sensor can be used to measure temperature in the fuel tank. Modeling the atmosphere during climb and descent using the tables in appendix 2 is required to determine the flammability exposure for use in the Monte Carlo analysis. It is not related to possible design features such as an oxygen sensor. No changes were made as a result of this comment.

Comment: The commenter would like to know who would make the decision regarding the use of lower flash point fuels for more than 1percent of the fleet operating time. The commenter asks how this determination will be made to apply to a particular airplane flown with a particular defined flight profile. Another commenter believes there should be allowance for factoring in a higher flash point for fuels if used for more than 1 percent of the fleet operating time.

Comment: A third commenter requests that the 3rd and 4th sentences in paragraph three of the ''Atmosphere'' discussion be changed to:

> Table 2 is based on typical use of Jet A type fuel, with limited TS–1 use. If an airplane fleet is expected to operate with low flash point fuels (such as JP–4) more than 1 percent of its operating time, or intermediate flash point fuels (such as TS–1) more than 10 percent of the fleet operating time, then the Monte Carlo analysis must include fuel property variation acceptable to the FAA for these approved fuels.

The commenter believes this change clarifies that some TS–1 fuel is already included in the Table 2 distribution, and adds a separate usage limit for low and intermediate flash point fuel that would require development of new worldwide fuel type studies only if exceeded. Currently, there are no data available to use for a statistical distribution of non Jet-A type fuels and it is unreasonable to expect an applicant to provide a Monte Carlo analysis incorporating a flammability exposure dataset for these other fuels where the appropriate data is not available. The impact on the flammability analysis of

up to 10 percent use of intermediate flash point fuels would be small; therefore, the study is not justified unless it is expected that the use of these fuels would exceed 10 percent.

FAA Reply: We agree, in part, with the commenters. The fuel properties tables in appendix 2 of the special conditions include a distribution of flash points reflecting an FAA survey of jet fuels used in both U.S. domestic and international routes. The tables therefore include an allowance for use of lower flash points fuels. The intent of the Monte Carlo analysis method is to provide a standardized analysis method to compare the flammability of the fuel tank under evaluation to the established flammability limits. The flammability limits were established based on a Monte Carlo analysis using the flash point table in these special conditions. To simplify the standardized analysis, we have deleted the need to consider other fuel flash point distributions from these special conditions.

Appendix 2: Oxygen Evolution

Comment: The commenter asks, if 12 percent or less oxygen percentage is tolerable at 10,000 feet (as opposed to 20.9 at sea level before NEA is available to the fuel tank), what oxygen concentration is needed on the ground at departure if the FRM is not fully effective immediately after engine start? Can the available NEA high flow rate keep up with the possible out gassing of the 30 percent oxygen level in the fuel in order to be at an oxygen level of 12 percent or less at 10,000 feet?

FAA Reply: The flammability requirements in the special conditions will limit the maximum oxygen concentration. We expect that if the FRM were not designed so that the oxygen concentration of the center wing fuel tank ullage is below 12 percent at sea level, it would not meet these requirements. It is also not possible to meet the specific risk requirements in the special conditions for warm day operations if the FRM does not reduce the oxygen concentration level below 12 percent during ground operations. The affects of oxygen evolution during climb must be accounted for in the analysis required by these special conditions. These special conditions do not preclude exceeding the 12 percent oxygen concentrations during transient conditions. For example, the tank may no longer be inert during a high descent rate or during a rapid climb where the tank could be above the 12 percent oxygen level for short periods of time. As previously discussed, we do not believe it is practical to require an FRM that would inert the fuel tank during all operational conditions within the airplane operating envelope. No changes were made as a result of these comments.

Comment: The commenter says the last sentence of this discussion should read, ''The applicant must provide the assumptions relating to air evolution rate'' because provision of substantiated data would not be possible due to the uncertain manner in which air evolves from the fuel during climb.

FAA Reply: We agree with the commenter that air evolution rates are uncertain and can vary from flight to flight depending on the fuel load and the conditions under which the fuel was loaded. However, we do not agree that it will not be possible to provide data to substantiate the air evolution rate for the center wing fuel tank. The FAA has not seen large transients related to air evolution during airplane model testing (FAA Report No. DOT/FAA/AR–01/63, ''Ground and Flight Testing of a Boeing 737 Center Wing Fuel Tank Inerted With Nitrogen-Enriched Air.'' We would expect air evolution rates determined by flight testing with typical fuel loading to be representative of those anticipated in service, so this data should be sufficient to address the effects of air evolution on oxygen concentrations. No changes were made as a result of this comment.

Other

In addition to the changes to the special conditions in response to comments, we made some changes to provide additional clarification in certain areas. Because those changes do not change the intent of the special conditions, they are not included in the discussion of comments.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes. Should the type certificate be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 747–100/200B/200F/200C/ SR/SP/100B/300/100B SUD/400/400D/400F series airplanes, modified by Boeing Commercial Airplanes to include a flammability reduction means (FRM) that uses a nitrogen generation system to inert the center wing tank with nitrogen-enriched air (NEA).

Compliance with these special conditions does not relieve the applicant from compliance with the existing certification requirements.

I. *Definitions.* (a) *Bulk Average Fuel Temperature.* The average fuel temperature within the fuel tank, or different sections of the tank if the tank is subdivided by baffles or compartments.

(b) *Flammability Exposure Evaluation Time (FEET).* For the purpose of these special conditions, the time from the start of preparing the airplane for flight, through the flight and landing, until all payload is unloaded and all passengers and crew have disembarked. In the Monte Carlo program, the flight time is randomly selected from the Mission Range Distribution (Table 3), the pre-flight times are provided as a function of the flight time, and the post-flight time is a constant 30 minutes.

(c) *Flammable.* With respect to a fluid or gas, flammable means susceptible to igniting readily or to exploding (14 CFR part 1, Definitions). A non-flammable ullage is one where the gas mixture is too lean or too rich to burn and/or is inert per the definition below.

(d) *Flash Point.* The flash point of a flammable fluid is the lowest temperature at which the application of a flame to a heated sample causes the vapor to ignite momentarily, or ''flash.'' The test for jet fuel is defined in ASTM Specification D56, ''Standard Test Method for Flash Point by Tag Close Cup Tester.''

(e) *Hazardous Atmosphere.* An atmosphere that may expose any person(s) to the risk of death,

incapacitation, impairment of ability to self-rescue (escape unaided from a space), injury, or acute illness.

(f) *Inert.* For the purpose of these special conditions, the tank is considered inert when the bulk average oxygen concentration within each compartment of the tank is 12 percent or less at sea level up to 10,000 feet, then linearly increasing from 12 percent at 10,000 feet to 14.5 percent at 40,000 feet and extrapolated linearly above that altitude.

(g) *Inerting.* A process where a noncombustible gas is introduced into the ullage of a fuel tank to displace sufficient oxygen so that the ullage becomes inert.

(h) *Monte Carlo Analysis.* An analytical tool that provides a means to assess the degree of fleet average and warm day flammability exposure time for a fuel tank. See appendices 1 and 2 of these special conditions for specific requirements for conducting the Monte Carlo analysis.

(i) *Transport Effects.* Transport effects are the effects on fuel vapor concentration caused by low fuel conditions, fuel condensation, and vaporization.

(j) *Ullage, or Ullage Space.* The volume within the fuel tank not occupied by liquid fuel at the time interval under evaluation.

II. *System Performance and Reliability.* The FRM, for the airplane model under evaluation, must comply with the following performance and reliability requirements:

(a) The applicant must submit a Monte Carlo analysis, as defined in appendices 1 and 2 of these special conditions, that—

(1) Demonstrates that the overall fleet average flammability exposure of each fuel tank with an FRM installed is equal to or less than 3 percent of the FEET; and

(2) Demonstrates that neither the performance (when the FRM is operational) nor reliability (including all periods when the FRM is inoperative) contributions to the overall fleet average flammability exposure of a tank with an FRM installed is more than 1.8 percent (this will establish appropriate maintenance inspection procedures and intervals as required in paragraph III (a) of these special conditions).

(3) Identifies critical features of the fuel tank system to prevent an auxiliary fuel tank installation from increasing the flammability exposure of the center wing tank above that permitted under paragraphs II (a)(1) and (2) of these special conditions and to prevent degradation of the performance and reliability of the FRM.

(b) The applicant must submit a Monte Carlo analysis that demonstrates that the FRM, when functional, reduces the overall flammability exposure of each fuel tank with an FRM installed for warm day ground, takeoff, and climb phases to a level equal to or less than 3 percent of the FEET in each of these phases for the following conditions—

(1) The analysis must use the subset of 80 °F and warmer days from the Monte Carlo analyses done for overall performance; and

(2) The flammability exposure must be calculated by comparing the time during ground, takeoff, and climb phases for which the tank was flammable and not inert, with the total time for the ground, takeoff, and climb phases.

(c) The applicant must provide data from ground testing and flight testing that—

(1) Validate the inputs to the Monte Carlo analysis needed to show compliance with (or meet the requirements of) paragraphs II (a), (b), and (c)(2) of these special conditions; and

(2) Substantiate that the NEA distribution is effective at inerting all portions of the tank where the inerting system is needed to show compliance with these paragraphs.

(d) The applicant must validate that the FRM meets the requirements of paragraphs II (a), (b), and (c)(2) of these special conditions, with any combination of engine model, engine thrust rating, fuel type, and relevant pneumatic system configuration approved for the airplane.

(e) Sufficient accessibility for maintenance personnel, or the flightcrew, must be provided to FRM status indications necessary to meet the reliability requirements of paragraph II (a) of these special conditions.

(f) The access doors and panels to the fuel tanks with an FRM (including any tanks that communicate with an inerted tank via a vent system), and to any other confined spaces or enclosed areas that could contain NEA under normal conditions or failure conditions, must be permanently stenciled, marked, or placarded as appropriate to warn maintenance crews of the possible presence of a potentially hazardous atmosphere. The proposal for markings does not alter the existing requirements that must be addressed when entering airplane fuel tanks.

(g) Any FRM failures, or failures that could affect the FRM, with potential catastrophic consequences must not result from a single failure or a combination of failures not shown to be extremely improbable.

III. *Maintenance.* (a) Airworthiness Limitations must be identified for all critical features identified under paragraph II (a)(3) and for all maintenance and/or inspection tasks required to identify failures of components within the FRM that are needed to meet paragraphs II (a), (b), and (c)(2) of these special conditions.

(b) The applicant must provide the maintenance procedures that will be necessary and present a design review that identifies any hazardous aspects to be considered during maintenance of the FRM that will be included in the instructions for continued airworthiness (ICA) or appropriate maintenance documents.

(c) To ensure that the effects of component failures on FRM reliability are adequately assessed on an on-going basis, the applicant must—

(1) Demonstrate effective means to ensure collection of FRM reliability data. The means must provide data affecting FRM availablity, such as component failures, and the FRM inoperative intervals due to dispatch under the MMEL;

(2) Provide a report to the FAA on a quarterly basis for the first five years after service introduction. After that period, continued quarterly reporting may be replaced with other reliability tracking methods found acceptable to the FAA or eliminated if it is established that the reliability of the FRM meets, and will continue to meet, the exposure requirements of paragraphs II (a) and (b) of these special conditions;

(3) Provide a report to the validating authorities for a period of at least two years following introduction to service; and

(4) Develop service instructions or revise the applicable airplane manual, per a schedule agreed on by the FAA, to correct any failures of the FRM that occur in service that could increase the fleet average or warm day flammability exposure of the tank to more than the exposure requirements of paragraphs II (a) and (b) of these special conditions.

Appendix 1

Monte Carlo Analysis

(a) A Monte Carlo analysis must be conducted for the fuel tank under evaluation to determine fleet average and warm day flammability exposure for the airplane and fuel type under evaluation. The analysis must include the parameters defined in appendices 1 and 2 of these special conditions. The airplane specific parameters and assumptions used in the Monte Carlo analysis must include:

(1) FRM Performance—as defined by system performance.

(2) Cruise Altitude—as defined by airplane performance.

(3) Cruise Ambient Temperature—as defined in appendix 2 of these special conditions.

(4) Overnight Temperature Drop—as defined in appendix 2 of these special conditions.

(5) Fuel Flash Point and Upper and Lower Flammability Limits—as defined in appendix 2 of these special conditions.

(6) Fuel Burn—as defined by airplane performance.

(7) Fuel Quantity—as defined by airplane performance.

(8) Fuel Transfer—as defined by airplane performance.

(9) Fueling Duration—as defined by airplane performance.

(10) Ground Temperature—as defined in appendix 2 of these special conditions.

(11) Mach Number—as defined by airplane performance.

(12) Mission Distribution—the applicant must use the mission distribution defined in appendix 2 of these special conditions or may request FAA approval of alternate data from the service history of the Model 747.

(13) Oxygen Evolution—as defined by airplane performance and as discussed in appendix 2 of these special conditions.

(14) Maximum Airplane Range—as defined by airplane performance.

(15) Tank Thermal Characteristics—as defined by airplane performance.

(16) Descent Profile Distribution—the applicant must use either a fixed 2500 feet per minute descent rate or provide alternate data from the service history of the Model 747.

(b) The assumptions for the analysis must include—

(1) FRM performance throughout the flammability exposure evaluation time;

(2) Vent losses due to crosswind effects and airplane performance;

(3) Any time periods when the system is operating properly but fails to inert the tank;

Note: localized concentrations above the inert level as a result of fresh air that is drawn into the fuel tank through vents during descent would not be considered as flammable.

(4) Expected system reliability;

(5) The MMEL/MEL dispatch inoperative period assumed in the reliability analysis (60 flight hours must be used for a 10-day MMEL dispatch limit unless an alternative period has been approved by the FAA), including action to be taken when dispatching with the FRM inoperative (**Note:** The actual MMEL dispatch inoperative period data must be included in the engineering reporting requirement of paragraph III(c)(1) of these special conditions.);

(6) Possible time periods of system inoperability due to latent or known failures, including airplane system shut-downs and failures that could cause the FRM to shut down or become inoperative; and

(7) Affects of failures of the FRM that could increase the flammability of the fuel tank.

(c) The Monte Carlo analysis, including a description of any variation assumed in the parameters (as identified under paragraph (a) of this appendix) that affect flammability exposure, and substantiating data must be submitted to the FAA for approval.

Appendix 2

I. *Monte Carlo Model.* (a) The FAA has developed a Monte Carlo model that can be used to develop a specific analysis model for the Boeing 747 to calculate fleet average and warm day flammability exposure for a fuel tank in an airplane. Use of the program requires the user to enter the airplane performance data specific to the airplane model being evaluated, such as maximum range, cruise mach number, typical step climb altitudes, tank thermal characteristics specified as exponential heating/cooling time constants, and equilibrium temperatures for various fuel tank conditions. The general methodology for conducting a Monte Carlo model is described in AC 25.981–2.

(b) The FAA model, or one with modifications approved by the FAA, must be used as the means of compliance with these special conditions. The accepted model can be downloaded from the Web site *http://qps.airweb.faa.gov/sfar88flamex*. On this Web site, the model is located under the page ''Flam Ex Resources,'' and is titled ''Monte Carlo Model Version 6a.'' The ''6a'' represents Version 6A. Only version 6A or later of this model can be used. The following procedures, input variables, and data tables must be used in the analysis if the applicant develops a unique model to determine fleet average flammability exposure for a specific airplane type.

II. *Monte Carlo Variables and Data Tables.* (a) Fleet average flammability exposure is the percent of the mission time the fuel tank ullage is flammable for a fleet of an airplane type operating over the range of actual or expected missions and in a world-wide range of environmental conditions and fuel properties. Variables used to calculate fleet average flammability exposure must include atmosphere, mission length (as defined in Special Condition I. Definitions, as FEET), fuel flash point, thermal characteristics of the fuel tank, overnight temperature drop, and oxygen evolution from the fuel into the ullage. Transport effects, including mass loading, flammability lag time, and condensation of vapors due to cold surfaces, are not to be allowed as parameters in the analysis.

(b) For the purposes of these special conditions, a fuel tank is considered flammable when the ullage is not inert and the fuel vapor concentration is within the flammable range for the fuel type being used. The fuel vapor concentration of the ullage in a fuel tank must be determined based on the bulk average fuel temperature within the tank. This vapor concentration must be assumed to exist throughout all bays of the tank. For those airplanes with fuel tanks having different flammability exposure within different compartments of the tank, where mixing of the vapor or NEA does not occur, the Monte Carlo analysis must be conducted for the compartment of the tank with the highest flammability. The compartment with the highest flammability exposure for each flight phase must be used in the analysis to establish the fleet average flammability exposure. For example, the center wing fuel tank in some designs extends into the wing and has compartments of the tank that are cooled by outside air, and other compartments of the tank that are insulated from outside air. Therefore, the fuel temperature and flammability is significantly different between these compartments of the fuel tank.

(c) *Atmosphere.* (1) To predict flammability exposure during a given flight, the variation of ground ambient temperatures, cruise ambient temperatures, and a method to compute the transition from ground to cruise and back again must be used. The variation of the ground and cruise ambient temperatures and the flash point of the fuel is defined by a Gaussian curve, given by the 50 percent value and a ± 1 standard deviation value.

(2) The ground and cruise temperatures are linked by a set of assumptions on the atmosphere. The temperature varies with altitude following the International Standard Atmosphere (ISA) rate of change from the ground temperature until the cruise temperature for the flight is reached. Above this altitude, the ambient temperature is fixed at the cruise ambient temperature. This results in a variation in the upper atmospheric (tropopause) temperature. For cold days, an inversion is applied up to 10,000 feet, and then the ISA rate of change is used.

(3) The analysis must include a minimum number of flights, and for each flight a separate random number must be generated for each of the three parameters (that is, ground ambient temperature, cruise ambient temperature, and fuel flash point) using the Gaussian distribution defined in Table 1. The applicant can verify the output values from the Gaussian distribution using Table 2.

(d) *Fuel Properties.* (1) *Flash point variation.* The variation of the flash point of the fuel is defined by a Gaussian curve, given by the 50 percent value and a ± 1-standard deviation value.

(2) *Upper and Lower Flammability Limits.* The flammability envelope of the fuel that must be used for the flammability exposure analysis is a function of the flash point of the fuel selected by the Monte Carlo for a given flight. The flammability envelope for the fuel is defined by the upper flammability limit (UFL) and lower flammability limit (LFL) as follows:

(i) LFL at sea level = flash point temperature of the fuel at sea level minus 10 degrees F. LFL decreases from sea level value with increasing altitude at a rate of 1 degree F per 808 ft.

(ii) UFL at sea level = flash point temperature of the fuel at sea level plus 63.5 degrees F. UFL decreases from the sea level value with increasing altitude at a rate of 1 degree F per 512 ft.

Note: Table 1 includes the Gaussian distribution for fuel flash point. Table 2 also includes information to verify output values for fuel properties. Table 2 is based on typical use of Jet A type fuel, with limited TS–1 type fuel use.

TABLE 1.—GAUSSIAN DISTRIBUTION FOR GROUND AMBIENT TEMPERATURE, CRUISE AMBIENT TEMPERATURE, AND FUEL FLASH POINT

Temperature in Deg F			
Parameter	Ground ambient temperature	Cruise ambient temperature	Flash point (FP)
Mean Temp	59.95	−70	120
Neg 1 std dev	20.14	8	8
Pos 1 std dev	17.28	8	8

TABLE 2.—VERIFICATION OF TABLE 1

% Probability of temps & flash point being below the listed values	Ground ambient temperature Deg F	Cruise ambient temperature Deg F	Flash point Deg F	Ground ambient temperature Deg C	Cruise ambient temperature Deg C	Flash point (FP) Deg C
1	13.1	−88.6	101.4	−10.5	−67.0	38.5
5	26.8	−83.2	106.8	−2.9	−64.0	41.6
10	34.1	−80.3	109.7	1.2	−62.4	43.2
15	39.1	−78.3	111.7	3.9	−61.3	44.3
20	43.0	−76.7	113.3	6.1	−60.4	45.1
25	46.4	−75.4	114.6	8.0	−59.7	45.9
30	49.4	−74.2	115.8	9.7	−59.0	46.6
35	52.2	−73.1	116.9	11.2	−58.4	47.2
40	54.8	−72.0	118.0	12.7	−57.8	47.8
45	57.4	−71.0	119.0	14.1	−57.2	48.3
50	59.9	−70.0	120.0	15.5	−56.7	48.9
55	62.1	−69.0	121.0	16.7	−56.1	49.4
60	64.3	−68.0	122.0	18.0	−55.5	50.0
65	66.6	−66.9	123.1	19.2	−55.0	50.6
70	69.0	−65.8	124.2	20.6	−54.3	51.2
75	71.6	−64.6	125.4	22.0	−53.7	51.9
80	74.5	−63.3	126.7	23.6	−52.9	52.6
85	77.9	−61.7	128.3	25.5	−52.1	53.5
90	82.1	−59.7	130.3	27.8	−51.0	54.6
95	88.4	−56.8	133.2	31.3	−49.4	56.2
99	100.1	−51.4	138.6	37.9	−46.3	59.2

(e) *Flight Mission Distribution.* (1) The mission length for each flight is determined from an equation that takes the maximum mission length for the airplane and randomly selects multiple flight lengths based on typical airline use.

(2) The mission length selected for a given flight is used by the Monte Carlo model to select a 30-, 60-, or 90-minute time on the ground prior to takeoff, and the type of flight profile to be followed. Table 3 must be used to define the mission distribution. A linear interpolation between the values in the table must be assumed.

TABLE 3.—MISSION LENGTH DISTRIBUTION AIRPLANE MAXIMUM RANGE—NAUTICAL MILES (NM)

Flight length (NM)		Airplane maximum range (NM)									
From	To	1000	2000	3000	4000	5000	6000	7000	8000	9000	10000
		Distribution of mission lengths (%)									
0	200	11.7	7.5	6.2	5.5	4.7	4.0	3.4	3.0	2.6	2.3
200	400	27.3	19.9	17.0	15.2	13.2	11.4	9.7	8.5	7.5	6.7
400	600	46.3	40.0	35.7	32.6	28.5	24.9	21.2	18.7	16.4	14.8
600	800	10.3	11.6	11.0	10.2	9.1	8.0	6.9	6.1	5.4	4.8
800	1000	4.4	8.5	8.6	8.2	7.4	6.6	5.7	5.0	4.5	4.0
1000	1200	0.0	4.8	5.3	5.3	4.8	4.3	3.8	3.3	3.0	2.7
1200	1400	0.0	3.6	4.4	4.5	4.2	3.8	3.3	3.0	2.7	2.4
1400	1600	0.0	2.2	3.3	3.5	3.3	3.1	2.7	2.4	2.2	2.0
1600	1800	0.0	1.2	2.3	2.6	2.5	2.4	2.1	1.9	1.7	1.6
1800	2000	0.0	0.7	2.2	2.6	2.6	2.5	2.2	2.0	1.8	1.7
2000	2200	0.0	0.0	1.6	2.1	2.2	2.1	1.9	1.7	1.6	1.4
2200	2400	0.0	0.0	1.1	1.6	1.7	1.7	1.6	1.4	1.3	1.2
2400	2600	0.0	0.0	0.7	1.2	1.4	1.4	1.3	1.2	1.1	1.0
2600	2800	0.0	0.0	0.4	0.9	1.0	1.1	1.0	0.9	0.9	0.8
2800	3000	0.0	0.0	0.2	0.6	0.7	0.8	0.7	0.7	0.6	0.6
3000	3200	0.0	0.0	0.0	0.6	0.8	0.8	0.8	0.8	0.7	0.7
3200	3400	0.0	0.0	0.0	0.7	1.1	1.2	1.2	1.1	1.1	1.0
3400	3600	0.0	0.0	0.0	0.7	1.3	1.6	1.6	1.5	1.5	1.4
3600	3800	0.0	0.0	0.0	0.9	2.2	2.7	2.8	2.7	2.6	2.5

TABLE 3.—MISSION LENGTH DISTRIBUTION AIRPLANE MAXIMUM RANGE—NAUTICAL MILES (NM)—Continued

Flight length (NM)		Airplane maximum range (NM)									
From	To	1000	2000	3000	4000	5000	6000	7000	8000	9000	10000
		Distribution of mission lengths (%)									
3800	4000	0.0	0.0	0.0	0.5	2.0	2.6	2.8	2.8	2.7	2.6
4000	4200	0.0	0.0	0.0	0.0	2.1	3.0	3.2	3.3	3.2	3.1
4200	4400	0.0	0.0	0.0	0.0	1.4	2.2	2.5	2.6	2.6	2.5
4400	4600	0.0	0.0	0.0	0.0	1.0	2.0	2.3	2.5	2.5	2.4
4600	4800	0.0	0.0	0.0	0.0	0.6	1.5	1.8	2.0	2.0	2.0
4800	5000	0.0	0.0	0.0	0.0	0.2	1.0	1.4	1.5	1.6	1.5
5000	5200	0.0	0.0	0.0	0.0	0.0	0.8	1.1	1.3	1.3	1.3
5200	5400	0.0	0.0	0.0	0.0	0.0	0.8	1.2	1.5	1.6	1.6
5400	5600	0.0	0.0	0.0	0.0	0.0	0.9	1.7	2.1	2.2	2.3
5600	5800	0.0	0.0	0.0	0.0	0.0	0.6	1.6	2.2	2.4	2.5
5800	6000	0.0	0.0	0.0	0.0	0.0	0.2	1.8	2.4	2.8	2.9
6000	6200	0.0	0.0	0.0	0.0	0.0	0.0	1.7	2.6	3.1	3.3
6200	6400	0.0	0.0	0.0	0.0	0.0	0.0	1.4	2.4	2.9	3.1
6400	6600	0.0	0.0	0.0	0.0	0.0	0.0	0.9	1.8	2.2	2.5
6600	6800	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.2	1.6	1.9
6800	7000	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8	1.1	1.3
7000	7200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	0.7	0.8
7200	7400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.3	0.5	0.7
7400	7600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.5	0.6
7600	7800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.5	0.7
7800	8000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.6	0.8
8000	8200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	0.8
8200	8400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.0
8400	8600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.6	1.3
8600	8800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	1.1
8800	9000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8
9000	9200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5
9200	9400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
9400	9600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9600	9800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9800	10000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1

(f) *Fuel Tank Thermal Characteristics.* (1) The applicant must account for the thermal conditions of the fuel tank both on the ground and in flight. The Monte Carlo model, available on the website listed above, defines the ground condition using an equilibrium delta temperature (relative to the ambient temperature) the tank will reach given a long enough time, with any heat inputs from airplane sources. Values are also input to define two exponential time constants (one for a near empty tank and one for a near full tank) for the ground condition. These time constants define the time for the fuel in the fuel tank to heat or cool in response to heat input. The fuel is assumed to heat or cool according to a normal exponential transition, governed by the temperature difference between the current temperature and the equilibrium temperature, given by ambient temperature plus delta temperature. Input values for this data can be obtained from validated thermal models of the tank based on ground and flight test data. The inputs for the inflight condition are similar but are used for inflight analysis.

(2) Fuel management techniques are unique to each manufacturer's design. Variations in fuel quantity within the tank for given points in the flight, including fuel transfer for any purpose, must be accounted for in the model. The model uses a ''tank full'' time, specified in minutes, that defines the time before touchdown when the fuel tank is still full. For a center wing tank used first, this number would be the maximum flight time, and the tank would start to empty at takeoff. For a main tank used last, the tank will remain full for a shorter time before touchdown and would be ''empty'' at touchdown (that is, tank empty at 0 minutes before touchdown). For a main tank with reserves, the term empty means at reserve level rather than totally empty. The thermal data for tank empty would also be for reserve level.

(3) The model also uses a ''tank empty'' time to define the time when the tank is emptying, and the program uses a linear interpolation between the exponential time constants for full and empty during the time the tank is emptying. For a tank that is only used for longrange flights, the tank would be full only on longer-range flights and would be empty a long time before touchdown. For short flights, it would be empty for the whole flight. For a main tank that carried reserve fuel, it would be full for a long time and would only be down to empty at touchdown. In this case, empty would really be at reserve level, and the thermal constants at empty should be those for the reserve level.

(4) The applicant, whether using the available model or using another analysis tool, must propose means to validate thermal time constants and equilibrium temperatures to be used in the analysis. The applicant may propose using a more detailed thermal definition, such as changing time constants as a function of fuel quantity, provided the details and substantiating information are acceptable and the Monte Carlo model program changes are validated.

(g) *Overnight Temperature Drop.* (1) An overnight temperature drop must be considered in the Monte Carlo analysis as it may affect the oxygen concentration level in the fuel tank. The overnight temperature drop for these special conditions will be defined using:

- A temperature at the beginning of the overnight period based on the landing temperature that is a random value based on a Gaussian distribution; and
- An overnight temperature drop that is a random value based on a Gaussian distribution.

(2) For any flight that will end with an overnight ground period (one flight per day out of an average of ''x'' number of flights per day, (depending on use of the particular airplane model being evaluated), the landing outside air temperature (OAT) is to be chosen as a random value from the following Gaussian curve:

TABLE 4.—LANDING OAT

Parameter	Landing temperature °F
Mean Temp	58.68

TABLE 4.—LANDING OAT—Continued

Parameter	Landing temperature °F
neg 1 std dev	20.55
pos 1 std dev	13.21

(3) The outside air temperature (OAT) drop for that night is to be chosen as a random value from the following Gaussian curve:

TABLE 5.—OAT DROP

Parameter	OAT Drop temperature °F
Mean Temp	12.0
1 std dev	6.0

(h) *Oxygen Evolution.* The oxygen evolution rate must be considered in the Monte Carlo analysis if it can affect the flammability of the fuel tank or compartment. Fuel contains dissolved gases, and in the case of oxygen and nitrogen absorbed from the air, the oxygen level in the fuel can exceed 30 percent, instead of the normal 21 percent oxygen in air. Some of these gases will be released from the fuel during the reduction of ambient pressure experienced in the climb and cruise phases of flight. The applicant must consider the effects of air evolution from the fuel on the level of oxygen in the tank ullage during ground and flight operations and address these effects on the overall performance of the FRM. The applicant must provide the air evolution rate for the fuel tank under evaluation, along with substantiation data.

(i) *Number of Simulated Flights Required in Analysis.* For the Monte Carlo analysis to be valid for showing compliance with the fleet average and warm day flammability exposure requirements of these special conditions, the applicant must run the analysis for an appropriate number of flights to ensure that the fleet average and warm day flammability exposure for the fuel tank under evaluation meets the flammability limits defined in Table 6.

TABLE 6.—FLAMMABILITY LIMIT

Number of flights in Monte Carlo analysis	Maximum acceptable fuel tank flammability (%)
1,000	2.73
5,000	2.88
10,000	2.91
100,000	2.98
1,000,000	3.00

Issued in Renton, Washington, on January 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2752 Filed 2–14–05; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
February 15, 2005

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21 and 91

Standard Airworthiness Certification of New Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 91

[Docket No. FAA–2003–14825; Notice No. 05–01]

RIN 2120–AH90

Standard Airworthiness Certification of New Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA seeks public comments on a proposal to amend the regulations for issuing a standard airworthiness certificate to certain new aircraft manufactured in the United States. The proposal addresses a concern that under the current regulations, certain new aircraft are eligible for a standard airworthiness certificate without meeting the requirements of a type certificate and without having been manufactured under an FAA production approval. The intended effect of this proposal is to ensure that new aircraft manufactured in the United States that receive a standard airworthiness certificate are type certificated and manufactured under an FAA production approval.

The FAA also proposes to incorporate requirements contained in laws recently passed by Congress. A holder of a type certificate or supplemental type certificate who allows another person to use the certificate would have to provide written permission to that person. In addition, any person who manufactures an aircraft, aircraft engine, or propeller based on a type certificate would have to either hold the type certificate or have a licensing agreement from the holder. The proposal would also prohibit a person from altering an aircraft based on a supplemental type certificate (STC) unless the owner or operator either holds the STC or has written permission from the holder. Additionally, it would require the owner or operator of an aircraft that has been altered based on written permission to use a supplemental type certificate to retain that permission and transfer it at the time the aircraft is sold.

DATES: Send comments to reach us before April 18, 2005.

ADDRESSES: You may send comments identified by Docket Number FAA–2003–14825, using any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide Rulemaking Web Site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Hayworth, Airworthiness Certification Branch, AIR–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8449.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of this notice, explain the reason for any recommendation, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this notice. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice. The docket is open between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Before taking other rulemaking action we will consider all comments we receive before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this notice, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

- Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);
- Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or
- Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking,

ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

This notice of proposed rulemaking (NPRM) addresses a concern that under the current regulations, certain new aircraft are eligible for a standard airworthiness certificate without meeting the requirements of a type certificate and without having been manufactured under an FAA production approval. The NPRM also proposes to incorporate requirements contained in laws recently passed by Congress. The requirements apply to holders and users of both type certificates and supplemental type certificates. We have divided the explanatory material that follows into three parts: Issuance of standard airworthiness certificates to used aircraft and surplus military aircraft; use of type certificates to manufacture new aircraft, aircraft engines, or propellers; and use of supplemental type certificates for alterations. Within each of the three parts, we provide both background information and a discussion of the specific amendatory language we are proposing.

1. Issuance of Standard Airworthiness Certificates to Used Aircraft and Surplus Military Aircraft

14 CFR 21.183 governs the issuance of standard airworthiness certificates. Section 21.183(a) applies to new aircraft manufactured under a production certificate, § 21.183(b) applies to new aircraft manufactured under type certificate only, and § 21.183(c) applies to import aircraft.

Section 21.183(d) of our current regulations applies to applicants for standard airworthiness certificates for aircraft not covered by § 21.183(a), (b), or (c). An applicant is entitled to a standard airworthiness certificate under § 21.183(d)(1) if he or she presents evidence the aircraft conforms to a type design approved under a type certificate or a supplemental type certificate and applicable Airworthiness Directives. The FAA must also find, after inspection, the aircraft conforms to the type design and is in condition for safe operation (14 CFR 21.183(d)(3)).

The requirements of § 21.183(d) were originally adopted in 1959 as an amendment to § 1.67(d) of the Civil Air Regulations (CAR), which were issued by the FAA's predecessor, the Federal Aviation Agency. CAR Amendment 1–2, dated September 1, 1959 (24 FR 7065), added a new paragraph (d), entitled ''Other aircraft'' to § 1.67. Amendment 1–2 provided for the airworthiness certification of aircraft that were used in military service and later released for civil use, and for other aircraft that had not had their airworthiness status maintained. The discussion of the amendment stated the regulation was created for other than newly manufactured aircraft. The requirements initially set forth in § 1.67(d) of the CAR, and now contained in § 21.183(d), have remained substantially unchanged since 1959.

The plain language of the regulation, however, does not limit the applicability of § 21.183(d) to surplus military aircraft, aircraft that have not had their airworthiness status maintained, or other than newly manufactured aircraft. Limited data and historical records show that, until recently, only a few newly manufactured aircraft have received standard airworthiness certificates on a case-by-case basis under § 21.183(d). These newly manufactured aircraft are presented for airworthiness certification as new aircraft that have not been produced under an FAA production approval. Also, the practice of issuing standard airworthiness certificates to surplus military aircraft released for civil use and aircraft that have not had their airworthiness status maintained has been ongoing for many years. Surplus military aircraft and aircraft that have not had their airworthiness status maintained are presented for airworthiness certifications as used aircraft (those that have had time in-service).

In 1966, the FAA proposed to amend § 21.183 by creating a separate paragraph for aircraft not manufactured under a type certificate or a production certificate. *See* 31 FR 8075, June 8, 1966. Public comments received in response to the proposal showed a misunderstanding of the proposal's intent. Commenters believed the FAA intended a broad change to the past certification practice of issuing airworthiness certificates to surplus military aircraft and aircraft that had not had their airworthiness status maintained. Since the FAA did not intend such a broad change, and since few new aircraft fell within the intended scope of the change, the FAA decided to abandon the proposal. The FAA stated that we would not adopt the proposed change, and we would continue to issue standard airworthiness certificates to newly manufactured aircraft under § 21.183(d). *See* 32 FR 14926, Oct. 28, 1967.

The System for Production of New Duplicate Aircraft Issued Standard Airworthiness Certificates

For the FAA to have confidence in the certification system for new aircraft manufactured in the United States and issued standard airworthiness certificates, the FAA has created a three-step system of type certification, production certification, and airworthiness certification. Type certification examines the basic design of the aircraft against the applicable airworthiness standards. Issuance of a type certificate (TC) for an aircraft is FAA approval that the design meets the applicable airworthiness standards of our regulations. Production certification for an aircraft examines whether the system produces duplicate aircraft that meet the design provisions of the pertinent TC. Issuance of a production certificate (PC) is a finding by the FAA that the quality control system of a manufacturer will permit it to produce duplicate versions of aircraft that conform to an approved type design. The FAA issues a standard airworthiness certificate to individual aircraft after finding that the aircraft conforms to the type design and is in condition for safe operation. The FAA relies heavily on the PC quality control system to make this finding.

Safety Benefits From the Linkage of the Type Certificate and the Production Certificate for Aircraft Issued Standard Airworthiness Certificates

A connection between the TC and the PC provides both an individual and a cumulative benefit. The individual benefit applies to an aircraft produced for initial airworthiness certification by a PC holder. For these aircraft, any deviation from the approved type design that is found during the conformity inspection can be evaluated by comparison to the data that supports issuance of the TC and any changes made after the initial TC issuance. This evaluation determines that the individual aircraft meets all the airworthiness standards identified by the TC.

The cumulative benefit applies to evaluating the total effect of any design change made after the initial issuance of the TC. The linkage of the PC to the data supporting the TC enables the aircraft manufacturer to evaluate the cumulative effect of design changes over time. The manufacturer can more readily determine whether a changed aircraft presented for original airworthiness certification continues to comply with the airworthiness standards identified in the TC.

The Level of Safety Assumed for Newly Manufactured Aircraft Issued Standard Airworthiness Certificates

Nearly all new aircraft manufactured in the United States are eligible for a standard airworthiness certificate if they are produced under the TC and PC processes. This ensures the aircraft conform to a type design and are in condition for safe operation. For aircraft issued standard airworthiness certificates, the FAA, the manufacturer, civil aviation authorities of other countries, and the public rely on the TC and PC processes to accurately produce multiple copies of an aircraft that meet airworthiness standards. Paragraphs (a) and (b) of § 21.183 recognize this process in issuing standard airworthiness certificates to aircraft produced in this manner. Also, as discussed in subsequent sections of this notice, TC and PC holders have certain responsibilities connected with holding these certificates.

Currently, new aircraft presented for standard airworthiness certification under § 21.183(d) do not have the same level of production oversight as newly manufactured aircraft produced under the TC and PC processes. Aircraft presented for airworthiness certification under § 21.183(d) do not have the advantage of prior examination and approval by the FAA of a production quality system, and a finding by the FAA of accurate reproduction to a type design is difficult. The applicant for an airworthiness certificate under § 21.183(d) must make a detailed aircraft-by-aircraft showing to support the entitlement to individual airworthiness certificates, placing a great burden on both the applicant and the FAA.

Advance Notice of Proposed Rulemaking (ANPRM)

The FAA published an ANPRM on this issue in the **Federal Register** on April 3, 2003 (68 FR 16217). We asked for public comments in advance of a specific proposal. The comment period closed June 6, 2003. We received four comments. Three of the four commenters, Cessna Aircraft, The New Piper Aircraft, Inc., and Air Transport Association of America, Inc., agreed with the concept expressed in the ANPRM, although one was concerned that the definitions of the terms ''spare parts'' and ''surplus parts'' were inadequate to meet current practices. The other commenter, Mr. Darrell A. Freeman, opposed the concept expressed in the ANPRM.

Mr. Freeman believed this change should be abandoned, as it was in 1966, because of the minor number of aircraft involved. As discussed earlier, the FAA decided, in 1967, that adoption of a separate paragraph specifically addressing certification of new aircraft not manufactured under a TC or PC was not appropriate since few new aircraft fell within the intended scope of the change and these aircraft could be certificated under the existing regulation. Now, however, we have seen a recent increase in the number of applicants engaging in serial production of new aircraft without holding a type certificate or production certificate and seeking a standard airworthiness certificates under section 21.183(d). This recent development causes us to revisit the 1966 proposal.

A member of the Air Transport Association of America believed that strict application of the proposed definitions of ''spare parts'' and ''surplus parts'' would cause the FAA to not consider parts produced under 14 CFR 21.303(b)(2), 21.502, or 43.13(b) as ''spare parts,'' and might require a manufacturer to get FAA production approval for such parts. Also, the commenter believed it is not clear whether the FAA would consider ''standard parts,'' as defined in 14 CFR 21.303(b)(4), as ''spare parts.'' As a result of this comment, we reviewed all definitions set forth in the ANPRM and decided to exclude them from this NPRM.

Basis for the Proposal

Readers should note that we are directing the proposed changes to § 21.183(d) to applicants seeking issuance of standard airworthiness certificates. Aircraft that have received a standard airworthiness certificate prior to the final rule would not be affected by this proposal. We do not intend for this change to apply to the new category of light-sport aircraft, which is the subject of a recent final rule (69 FR 44772, July 27, 2004).

The FAA's Aircraft Certification Service has learned that people are, or plan to be, engaged in the manufacture or assembly of new aircraft, with the intent of obtaining standard airworthiness certificates under 14 CFR 21.183(d). These people intend to build aircraft that match a type design under a previously approved TC. The builders of these aircraft do not hold a TC, or a PC, nor do they have authorization from the original TC holder to use the TC in the manufacture of new aircraft.

Since these aircraft builders do not hold a PC, the FAA has no assurance preceding issuance of a standard airworthiness certificate that the individual aircraft produced conforms to a type design. Each aircraft must be individually evaluated, compared to type design data, and determined to be in condition for safe operation, which is often difficult to do. If the builder can meet this burden for each aircraft produced, the resulting burden on the FAA to make the evaluations is significant. Given the limited resources available to the FAA, such a process is impractical.

Also, since these builders do not hold a TC, several of the regulatory responsibilities of a TC holder do not apply. For example, without a TC, builders of new aircraft who apply for standard airworthiness certificates under paragraph (d) do not have to:

- Have access to the supporting data originally used to show compliance to the airworthiness standards;
- Provide instructions for continued airworthiness;
- Establish and maintain an FAA production approval;
- Report failures, malfunctions, or defects; or
- Develop design changes to address safety issues identified by an Airworthiness Directive.

As a result, safety may be compromised, and an undue burden placed on the FAA to oversee or independently perform these functions, which legitimately should remain with the TC holder for the aircraft.

Obtaining type and production certificates for manufacturing new products is a fundamental concept in the regulatory framework for the issuance of a standard airworthiness certificate. Inherent in this concept is that a PC holder is entitled to obtain a standard airworthiness certificate for an aircraft without further showing to the FAA. However, building new aircraft for the issuance of standard airworthiness certificates under § 21.183(d) is not consistent with the regulatory framework or with the requirements for obtaining standard airworthiness certificates for new aircraft manufactured under a production certificate under § 21.183(a) or new aircraft manufactured under type certificate only under § 21.183(b).

Section-by-Section Analysis

The FAA proposes to amend the current § 21.183(d) to preclude standard airworthiness certification of new aircraft manufactured by persons who do not hold a type certificate (or license to it), and production approval. Specifically, paragraph (d) would apply only to used aircraft and surplus military aircraft. This would include used aircraft without a current airworthiness certificate, used aircraft

certificated under § 21.29, and U.S.-manufactured civil aircraft that were exported and later returned to the United States for FAA certification. Under this section, used aircraft are considered aircraft with time in service that have held an airworthiness certificate or have been operated by the U.S. Armed Forces. Time in service does not include aircraft operations for the purpose of conducting research and development or production flight testing.

Used aircraft do not include aircraft that have been classified as destroyed or demolished by the National Transportation Safety Board. Additionally, the term used aircraft does not include an aircraft damaged to the extent that it would be impracticable or unsafe to return it to an airworthy condition. Such an aircraft would be classified as destroyed. This action could be the result of occurrences such as tornados, hurricanes, floods, fires, or vandalism. Under current regulations, the FAA considers these aircraft as totally destroyed for the purposes of meeting the provisions of § 47.41(a)(3). Section 47.41 terminates the Certificate of Aircraft Registration once an aircraft is identified as destroyed. At that time the owner must return the Certificate of Aircraft Registration to the FAA Aircraft Registry per § 47.41(b)(3). With the Certificate of Aircraft Registration terminated, the standard airworthiness certificate is no longer effective per § 21.181(a)(1). Although these aircraft would not be entitled to a standard airworthiness certificate under § 21.183(d), an applicant, in special circumstances, may want to pursue issuance of a special airworthiness certificate.

This proposed amendment would ensure the proper assignment of type certificate and production approval holder responsibilities to manufacturers of new aircraft produced in the United States. We are not proposing any change to other paragraphs under § 21.183.

2. Use of Type Certificates To Manufacture New Aircraft, Aircraft Engines, or Propellers

Vision 100—Century of Aviation Reauthorization Act of 2003 (Pub. L. 108–176, 117 Stat. 2490) was signed into law December 12, 2003. This Act amends 49 U.S.C. 44704(a) by adding a requirements paragraph to the section. This paragraph establishes a requirement for the type certificate holder to provide persons permitted to use its type certificate to manufacture a new aircraft, aircraft engine, or propeller with written evidence of that permission in a form and manner acceptable to the FAA. In addition, the statute states that a person may manufacture a new aircraft, aircraft engine, or propeller based on a type certificate only if the person is the holder of the certificate, or has permission from the holder of the certificate.

Section-by-Section Analysis

The FAA proposes adding new § 21.6, titled ''Manufacture of new aircraft, aircraft engines, and propellers.'' This new section would prohibit a person from manufacturing a new aircraft, aircraft engine, or propeller based on a type certificate unless the person—

- Is the holder of the type certificate, or has a licensing agreement from the holder of the type certificate to manufacture the product; and
- Meets the requirements of subpart F or G of part 21.

The reference to subparts F and G means that the person would have to comply with our regulations governing production under a type certificate only or production certificates, respectively when manufacturing a new aircraft, aircraft engine, or propeller.

The FAA also proposes adding new § 21.55, titled ''Responsibility of type certificate holders to provide written licensing agreements.'' This new section would require a type certificate holder who agrees to permit another person to use a type certificate to manufacture a new aircraft, aircraft engine, or propeller to provide that person with a licensing agreement in a form and manner acceptable to the FAA. To be acceptable to the FAA, the licensing agreement should contain the following:

- A written statement of the agreement specifying product(s) to be manufactured;
- The model number; and
- The name of the person(s) who is being given consent to use the type certificate.

The type certificate holder may include more information, such as the effective date of the agreement or how long the type certificate may be used.

3. Use of Supplemental Type Certificates for Alterations

The Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264, 110 Stat. 3213) was signed into law on October 9, 1996. This Act amended 49 U.S.C. 44704 by establishing a requirement for a supplemental type certificate (STC) holder to provide to persons permitted to use the STC to alter an aircraft, aircraft engine, or propeller written evidence of the agreement in a form and manner acceptable to the FAA. In addition, a person may alter an aircraft, aircraft engine, or propeller based on an STC only if the person requesting the change is the holder of the certificate, or has written permission from the holder of the certificate.

Section-by-Section Analysis

The FAA proposes adding new § 21.120, titled ''Responsibility of supplemental type certificate holders to provide written permission for alterations.'' This new section would require a supplemental type certificate holder who agrees to permit another person to use a supplemental type certificate to alter an aircraft, aircraft engine, or propeller to provide that person with written permission. This written permission would be known as the ''permission statement.'' The form of the permission statement, to be acceptable to the FAA, should contain at least the following:

- A written statement of the agreement specifying product(s) to be altered;
- The STC number; and
- The name of the person(s) who is being given consent to use the STC.

The STC holder may include more information, such as the effective date of the permission and how many times the STC may be used for fleets of aircraft.

The FAA also proposes adding a new § 91.403(d) that would establish a requirement that a person may only alter an aircraft based on a supplemental type certificate if the owner or operator of the aircraft is the holder of the supplemental type certificate or has written permission from the holder. After the effective date of the rule, any owner or operator of an aircraft who receives written permission to alter an aircraft based on a supplemental type certificate would be required to retain the written permission until the alteration is superceded. The owner or operator also would be required to transfer this written permission with the aircraft at the time the aircraft is sold.

In addition, when a person alters an aircraft by installing an aircraft engine or propeller that had previous alterations based on another person's supplemental type certificate, under proposed § 91.403(d), the owner or operator would be required to retain the written permission used to alter each engine or propeller installed on the aircraft. If an STC holder is making alterations to an aircraft, aircraft engine, or propeller that the STC holder owns, the proposed provisions of § 91.403(d) would not apply. The FAA has determined that such provisions should not apply to STC holders because ownership is identified on the STC

document itself and the document is available for review.

Each person who alters an aircraft based on another person's STC, including a person making an alteration for a product owner or operator, should be aware of the statutory requirement for the person requesting the change to have the permission of the STC holder before performing the alteration. The statute also clearly prohibits a person from performing the alteration unless the person requesting the change has the permission of the STC holder. The mechanic, repair station, or other facility making the installation should, to ensure their own compliance with the statutory requirement, request to see a copy of the written permission provided by the STC holder to the person requesting the change. The installer, mechanic, or repair station who has obtained permission directly from the STC holder to use the STC should also furnish a copy of the STC holder's permission statement to the owner or operator of the modified product to ensure the owner's compliance with statutory and regulatory requirements.

The FAA is not proposing to apply the recordkeeping requirement retroactively to alterations made before the final rule becomes effective. STC holders who have obtained the STC by transfer after the final rule is issued would not be required to issue a retroactive permission statement for already installed STCs. The FAA notes, however, that compliance with the statutory requirements of 49 U.S.C. 44704(b)(3) is required. Compliance with these requirements is not dependent upon adoption of this proposal.

FAA responsibilities for certification activities would remain unchanged if we adopt this NPRM. The FAA, during the certification process, makes a finding that the applicable airworthiness requirements have been met (based on data submitted by an applicant). Once this finding has been made, the FAA issues a certificate to the applicant. The certificate is the means by which the FAA conveys its approval for the certificate holder to exercise the privileges of that certificate.

Paperwork Reduction Act

Information collection requirements associated with this NPRM have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0005.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Economic Impact

Initial Economic Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

The FAA has determined that this proposed rule has minimal costs, and that it is neither ''a significant regulatory action'' as defined in Executive Order 12866, nor ''significant'' as defined in DOT's Regulatory Policies and Procedures. Further, this proposal would not have a significant economic impact on a substantial number of small entities, would not impact international trade, and would not impose an Unfunded Mandate on State, local, or tribal governments, or on the private sector.

DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined the expected impact is so minimal the rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the regulation. Accordingly, the FAA has determined the expected impact of this rule is so minimal the rule does not warrant a full evaluation. The basis for this determination is provided below.

Background

There are two Public Laws upon which this proposal is based: Vision 100—Century of Aviation Reauthorization Act of 2003 was signed into law on December 12, 2003. This Act amends Title 49 U.S.C. 44704(a)(3). It states:

> If the holder of a type certificate agrees to permit another person to use the certificate to manufacture a new aircraft, aircraft engine, propeller, or appliance, the holder shall provide the other person with written evidence, in a form acceptable to the Administrator, of that agreement. Such other person may manufacture a new aircraft, aircraft engine, propeller, or appliance based on a type certificate only if the person is the holder of the type certificate or has permission from the holder.

The Federal Aviation Authorization Act of 1996 was signed into law on October 9, 1996. This Act amends Title 49 U.S.C. 44704(b). It states:

> If the holder of a supplemental type certificate agrees to permit another person to use the certificate to modify an aircraft, aircraft engine, propeller, or appliance, the holder shall provide the other person with written evidence, in a form acceptable to the Administrator, of that agreement. A person may change an aircraft, aircraft engine, propeller, or appliance based on a supplemental type certificate only if the person requesting the change is the holder of the supplemental type certificate or has permission from the holder to make the change.

The FAA believes the economic impact of this proposal to be minimal because this proposed rule would establish a regulatory framework to ensure that the statutory requirements are met. It would also codify common industry business practice for the manufacture of new aircraft that are issued standard airworthiness certificates.

To make this determination in the economic assessment, the FAA evaluates each section of the proposal and its relation to current public law or to current industry practice. The FAA seeks comments on its determination, and requests that all comments be accompanied by supporting data and additional documentation.

Standard Airworthiness Certificates (Used Aircraft and Surplus Military Aircraft)

The proposed change to § 21.183(d) would codify common industry practices for the manufacture of new

aircraft that are issued standard airworthiness certificates.

It would require airplane manufacturers to hold both a type certificate and production approval for all airplanes produced that are issued a standard airworthiness certificate. Current industry practice shows that TC holders who are involved in the serial production of aircraft, also hold production approval. Production approvals relieve manufacturers of the additional time required to have the FAA examine each aircraft prior to the issuance of its airworthiness certificate. The FAA believes the proposed requirement meets the statutory intent and codifies common industry practice for the manufacture of new aircraft that are issued standard airworthiness certificates. The FAA believes that this requirement would not result in significant additional cost to the industry.

Responsibility of Supplemental Type Certificate Holders

The FAA proposes § 21.120 to conform with 49 U.S.C. 44704(b), Supplemental Type Certificates. The proposal would require supplemental type certificate holders to provide written permission, when allowing use of a supplemental type certificate. The proposed change does not impose cost to the industry because it is a current statutory requirement for STC holders.

Alterations Based on Supplemental Type Certificates

The FAA proposes § 91.403(d) to conform with 49 U.S.C. 44704(b), Supplemental Type Certificates. It would require an owner or operator requesting that an aircraft be altered based on a supplemental type certificate to obtain written permission from the supplemental type certificate holder. The owner or operator of an aircraft who receives written permission to alter an aircraft based on a supplemental type certificate must retain the written permission until the alteration is superceded. The owner or operator must transfer this written permission with the aircraft at the time the aircraft is sold. Requiring the owner or operator to retain written permission provides a means to ensure compliance with the statute. The FAA believes that these records are retained by owners and operators as common industry practice and therefore would not impose additional cost to the industry.

Responsibility of Type Certificate Holder To Provide Written Licensing Agreements

The FAA proposes § 21.55 to conform with the statutory intent of 49 U.S.C. 44704(a)(3). The proposal would require a type certificate holder to provide a person with a licensing agreement when allowing use of a type certificate to manufacture an aircraft, aircraft engine, or propeller. The proposed change does not impose a cost to the industry because it is a current statutory requirement for TC holders to provide written evidence in a form acceptable to the Administrator of such an agreement.

Manufacture of New Aircraft, Aircraft Engines and Propellers

The FAA proposes § 21.6 to conform with 49 U.S.C. 44704(a)(3). It would preclude a person from manufacturing new aircraft, aircraft engines and propellers, based on a type certificate, without a licensing agreement from the type certificate holder. The proposed change does not impose a cost to the industry because it is a current statutory requirement that a person manufacturing a new aircraft, aircraft engine, or propeller based on a type certificate do so only if that person is the holder of the type certificate or has permission from the holder.

Economic Summary

The FAA believes the economic impacts of this proposal are minimal because the proposal would codify common industry business practice and is based upon current public law. The FAA requests comments regarding these findings and requests that these comments provide supporting documentation.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Individuals affected by this proposal would include applicants for standard airworthiness certificates under § 21.183(d), supplemental type certificate holders, persons who alter aircraft, type certificate holders, and owners or operators of aircraft. Many of these would qualify as small businesses. Although the proposed rule could affect a substantial number of small businesses, the FAA believes there would be no small entity impact for the following reasons:

The proposed change to § 21.183(d) would codify common industry practices for the manufacture of new aircraft that are issued standard airworthiness certificates.

Current industry practice shows that TC holders, who are involved in the serial production of aircraft, also hold production approvals. Because all new aircraft intended for standard airworthiness certification are type certificated and are either manufactured or intended to be manufactured under a production approval, there are no resulting costs to small entities.

In addition, supplemental type certificate holders, persons who alter aircraft, type certificate holders, manufacturers of new aircraft, and owners or operators of aircraft would be affected by this proposal. Although many are small businesses, they would not be adversely affected by the proposed rule because the proposal would establish a regulatory framework to ensure that the existing statutory requirements are met.

Consequently, the FAA certifies that the rule would not have a significant economic impact on a substantial number of small entities. The FAA invites comments on this determination and requests all comments be accompanied by clear and detailed supporting documentation.

Initial International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from

engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

This proposed rule considers and incorporates existing public laws and common industry practices as the basis of an FAA regulation. Thus, the FAA believes that the proposed rule would not create obstacles to international trade.

Initial Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment of environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 308c(1) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the FAA proposes to amend chapter I of Title 14, Code of Federal Regulations, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 is revised to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

2. Add new § 21.6 to read as follows:

§ 21.6 Manufacture of new aircraft, aircraft engines, and propellers.

A person must not manufacture a new aircraft, aircraft engine, or propeller based on a type certificate unless the person—

(a) Is the holder of the type certificate or has a licensing agreement from the holder of the type certificate to manufacture the product; and

(b) Meets the requirements of subparts F or G of this part.

3. Add new § 21.55 to read as follows:

§ 21.55 Responsibility of type certificate holders to provide written licensing agreements.

A type certificate holder who allows another person to use the type certificate to manufacture a new aircraft, aircraft engine, or propeller must provide that person with a written licensing agreement acceptable to the FAA.

4. Add new § 21.120 to read as follows:

§ 21.120 Responsibility of supplemental type certificate holders to provide written permission for alterations.

A supplemental type certificate holder who allows another person to use the supplemental type certificate to alter an aircraft, aircraft engine, or propeller must provide that person with written permission acceptable to the FAA.

5. Amend § 21.183 by revising paragraph (d) introductory text to read as follows:

§ 21.183 Issue of standard airworthiness certificates for normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; and special classes of aircraft.

* * * * *

(d) *Used aircraft and surplus military aircraft.* An applicant for a standard airworthiness certificate for a used aircraft or surplus military aircraft is entitled to a standard airworthiness certificate if—

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

6. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

7. Add new paragraph (d) to § 91.403 to read as follows:

§ 91.403 General.

* * * * *

(d) A person must not alter an aircraft based on a supplemental type certificate unless the owner or operator of the aircraft is the holder of the supplemental type certificate, or has written permission from the holder. After (INSERT EFFECTIVE DATE OF THE FINAL RULE), any owner or operator of an aircraft who receives written permission to alter the aircraft based on a supplemental type certificate must retain the written permission until the alteration is superseded. The owner or operator must transfer this written permission with the aircraft at the time the aircraft is sold.

Issued in Washington, DC, on February 7, 2005.

Nicholas A. Sabatini,

Associate Administrator for Aviation Safety.

[FR Doc. 05–2799 Filed 2–14–05; 8:45 am]

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